S. Hrg. 99-663

# COURT INTERPRETERS IMPROVEMENT ACT OF 1985

## HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

## S. 1853

A BILL TO AMEND THE COURT INTERPRETERS ACT OF 1978

FEBRUARY 25, 1986

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# COURT INTERPRETERS IMPROVEMENT ACT OF 1985

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TUESDAY, FEBRUARY 25, 1986

U.S. Senate,
Subcommittee on the Constitution,
Committee on the Judiciary,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:12 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senators Thurmond, Simon, Grassley, and DeConcini.

Staff present: Randall Rader, chief counsel and staff director; and Dee Benson, special counsel.

## OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator **Hatch**. Good morning, ladies and gentlemen. We are here today to consider S. 1853, the Court Interpreters Improvement Act of 1985. This proposed legislation is designed to further enhance the efficacy of the original Court Interpreters Act which was passed in 1978 and which was, of course, put through the Congress by my eminent colleague and friend, Dennis DeConcini.

That bill established a right to non-English-speaking or hearing-impaired defendants and witnesses to effective interpretation services in our Federal courts.

The original bill, in my opinion, has worked very well and has undoubtedly improved the conditions in our Federal courts for those persons who do not speak English or who have a hearing deficiency. Still, in the 8-year history of the Court Interpreters Act, some deficiencies have developed. The purpose of S. 1853 is to correct those deficiencies.

One of the major aspects of this proposal extends the Court Interpreters Act to include grand jury proceedings. This extension is the main reason for introducing this legislation at this time.

The original bill relates only to proceedings in court. It leaves witnesses before grand juries with no guarantee of fair and competent interpretation services. The Federal prosecutor is presently free to hire, fire, and control the person who performs interpretation services before the grand jury.

The prosecutor may hire the friend of a friend of a friend who reportedly speaks a passable version of English and the foreign language in question. There is no quality control.

And yet, I do not think there is any question that the grand jury stage of a criminal investigation is the place where we need accuracy and fairness the most, or at least as much as any other place in the criminal proceeding. Witnesses before grand juries have a way of becoming defendants. We should at the very least make sure that they understand the questions which are put to them.

Another improvement made by this bill is to provide a procedure for the mandatory certification of major foreign language interpreters. The original bill contemplated such certification, but to date only Spanish has received such status. This bill specifies the major languages for which certification will be required. We will want to discuss this proposal in more depth here today.

The U.S. Constitution's sixth amendment guarantees a fair trial and the right of the accused to confront his or her witnesses. This particular amendment is understandably held in the highest esteem by this committee.

At this hearing, we will explore the provisions of S. 1853 in some detail. There may be some changes required, and we will want to fully explore those here today.

[Text of S. 1853 follows:]

II

99TH CONGRESS
1ST SESSION

# S. 1853

To amend the Court Interpreters Act of 1978.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14 (legislative day, NOVEMBER 12), 1985

Mr. HATCH (for himself, Mrs. HAWKINS, Mr. CHAFEE, Mr. ANDREWS, Mr. MATSUNAGA, Mr. HARKIN, Mr. ZORINSKY, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To amend the Court Interpreters Act of 1978.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Court Interpreters Improvement Act of 1985".

SEC. 2. (a) The Congress hereby finds that—

(1) qualified interpreters are sometimes not provided to non-English speaking persons and the hearing impaired in judicial proceedings conducted pursuant to the jurisdiction and authority of the United States District Courts; and

(2) the failure to provide competent interpretation services to such individuals in Federal judicial proceedings could, under certain circumstances, constitute a denial of rights secured by the Fifth and Sixth Amendments to the Constitution of the United States because such individuals may—

(A) be deprived of life, liberty, or property without due process of law;

(B) be unable to confront adverse witnesses due to a lack of comprehension;

(C) be deprived of the ability to effectively consult with counsel; and

(D) fail to comprehend the rulings and pronouncements of the court or of documentary evidence introduced in such proceedings.

(b)(1) The Congress declares that the constitutional rights of non-English speaking persons and the hearing impaired, guaranteed by the Fifth and Sixth Amendments to the Constitution of the United States shall be protected by requiring the certification of interpreters for certain specified languages and by requiring the promulgation of definitive standards and criteria for otherwise qualified interpreters who may be permitted to participate in Federal judicial proceedings.

(2) The Congress declares that the purpose of this Act is to provide competent interpretation services to parties and witnesses in judicial proceedings instituted by the United States in order to assure that such persons who are hearing impaired or who have as their primary language a language other than English may participate meaningfully therein and that the constitutional rights of such persons are fully protected.

SEC. 3. Section 1827(a) of title 28, United States Code, is amended to read as follows:

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.".

SEC. 4. Section 1827(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) The Director, after consultation with the National Court Interpreters Special Task Force, as provided for in section 1829, shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director shall also examine, evaluate, and monitor the performance of such certified interpreters in order to assure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter. The Director shall certify interpreters based on the results of criterion-referenced performance examinations, which shall be developed and administered by the Director after consultation with the National Court Interpreters Special Task Force. The languages for which such examinations are developed shall also be determined by the Director after consultation with the National Court Interpreters Special Task Force. The Director shall examine and certify interpreters in at least all of the following languages: Spanish, Italian, Chinese, Japanese, French (Creole), Korean, Portuguese, Arabic, and American Sign Language. Such examinations shall be initially administered within one year after the Director's receipt of recommendations from the National Court Interpreters Special Task Force. The Director shall issue regulations pertaining to all the foregoing duties within one year after the date of enactment of this section.

"(2) The Director, after consultation with the National Court Interpreters Special Task Force and within one year after the date of enactment of this section, shall issue regulations establishing criteria based on interpreter education, training, required performance, and experience, for the selection of otherwise qualified interpreters of languages for which no interpreters have been certified by the Director, and in the selection of otherwise qualified interpreters where no certified interpreter is reasonably available, as provided by subsection (d) of this section. Such criteria shall be designed to assure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter. The Director shall evaluate and monitor the performance of such noncertified otherwise qualified interpreters in the manner prescribed by paragraph (1).

(3) The Director shall maintain a current master list of all certified interpreters and shall report annually on the qualifications, use, and performance of both certified and noncertified interpreters in judicial proceedings instituted by the United States. The Director shall prescribe, subject to periodic revision, a schedule of fees for services rendered by interpreters. Such fees shall be reasonable and consistent with prevailing compensation rates for professional simultaneous and consecutive court interpreters in the judicial district where such interpretation services are rendered, or the judicial district from which a certified or otherwise qualified interpreter is obtained, whichever is greater. In no event shall fees for interpreters be set at a rate less than those currently paid by the United States Department of State to conference level interpreters for the same language.

SEC. 5. Subsection 1827(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of any reasonably available certified interpreter. If after full and complete efforts have been made to obtain the services of such an interpreter, as expressly determined on the record by the presiding judicial officer, a determination is made that no certified interpreter is reasonably available, the services of an otherwise qualified interpreter may be utilized in any judicial proceeding instituted by the United States, whether criminal or civil, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such proceedings—

"(A) speaks only or primarily a language other than the English language; or

"(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment),

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and documentary evidence and the presentation of such testimony or documentary evidence.

"(2) The presiding judicial officer, with the assistance of the Director, shall determine on the record whether any noncertified interpreter meets the criteria of subsection (b) to be considered as an otherwise qualified interpreter.".

SEC. 6. Section 1827(e)(2) of title 28, United States Code, is amended to read as follows:

"(2) In any judicial proceeding instituted by the United States, whether criminal or civil, if the presiding judicial officer does not appoint an interpreter under subsection (d), an individual requiring the services of an interpreter may request that the clerk of the court or the Director of the Administrative Office of the United States Courts assist in obtaining a certified interpreter.".

SEC. 7. Section 1827(f) of title 28, United States Code, is amended to read as follows:

"(f)(1) Any individual other than a witness who is entitled to interpretation services pursuant to subsection (d), may waive such right to such interpretation in whole or in part. Such waiver shall be effective only if—

"(A) it is approved by the presiding judicial officer,

"(B) it is expressly made by such individual, on the record, after such individual has had an opportunity to consult with counsel, and

"(C) the presiding judicial officer has explained to such individual, utilizing the services of any certified interpreter who is reasonably available, or if no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, the nature and effect of such waiver. The presiding judicial officer, in deciding whether or not to approve any such attempted waiver, shall consider and determine, on the record—

"(i) whether a certified interpreter is reasonably available;

"(ii) whether any noncertified interpreter requested by such party meets the criteria established by the Director for otherwise qualified interpreters as provided by subsection (b); and

"(iii) the possible interest of any such noncertified interpreter in the outcome of the judicial proceeding.

"(2) An individual who effectively waives the right to a certified interpreter, under paragraph (1), may utilize the services of a noncertified interpreter of such individual's choice, if such noncertified interpreter meets the criteria established by the Director for otherwise qualified interpreters as provided by subsection (b). A privately retained interpreter shall be paid by the party exercising the right to waive interpretation services under subsection (d).".

SEC. 8. Section 1827(g)(1) of title 28, United States Code, is amended to read as follows:

"(g)(1) There are authorized to be appropriated to the Administrative Office of the United States Courts such sums as may be necessary to carry out the provisions of this title, including payment of the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsections (b) and (d) of this section. The Director of the Administrative Office of the United States Courts shall utilize such appropriated funds to carry out the duties set forth herein.".

SEC. 9. Section 1827(g) of title 28, United States Code, is amended by—

(1) redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(2) inserting after paragraph (1) the following new paragraph:

"(2) There are authorized to be appropriated to the Federal Judicial Center such sums as may be necessary to carry out all duties prescribed by section 1829, including payment of the salaries, fees, expenses, and costs of the National Court Interpreters Special Task Force, staff personnel, and part-time consultants.".

Sec. 10. Section 1827(i) of title 28, United States Code, of title 28, United States Code, is amended to read as follows:

"(i) The term 'presiding judicial officer' as used in this section refers to any judge of a United States District Court (including judges presiding over grand jury proceedings), United States magistrates, and Referees in Bankruptcy.".

Sec. 11. Section 1827(j) of title 28, United States Code, is amended to read as follows:

"(j) The term 'judicial proceeding' as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator), instituted by the United States and conducted in, or pursuant to, the lawful authority and jurisdiction of a United States District Court or Bankruptcy Court. The term 'United States District Court' as used in this subsection includes any court created by an Act of the Congress in a territory which is invested with any jurisdiction of a District Court of the United States established by section 132 of this title.".

Sec. 12. Section 1827 of title 28, United States Code, is amended by—

(1) redesignating subsection (k) as subsection (l); and

(2) inserting after subsection (j) the following new subsection:

"(k) The term 'otherwise qualified' interpreter as used in this chapter refers to an interpreter who meets the educational, training, job-related performance and experience criteria established by the Director of the Administrative Office of the United States Courts, after consultation with the National Court Interpreters Special Task Force, for noncertified court interpreters.".

SEC. 13. Subsection 1827(l) of title 28, United States Code, as redesignated, is amended to read as follows:

"(l) The interpretation provided by certified and noncertified otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous, consecutive, or summary interpretation as appropriate when such officer determines on the record that such interpretation will aid in the efficient administration of justice.".

SEC. 14. Section 1827 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) The presiding judicial officer and the Director of the Administrative Office of the United States Courts shall cooperate fully in order to assure that certified or noncertified otherwise qualified interpreters and proper interpretation facilities (including electronic equipment for simultaneous interpretation in multidefendant judicial proceedings) are provided to all persons entitled to such services under this section.".

SEC. 15. (a) Chapter 119 of title 28, United States Code, is amended by—

(1) repealing section 1828; and

(2) adding at the end thereof the following new section:

### "§ 1829. National Court Interpreters Special Task Force

"(a)(1) A National Court Interpreters Special Task Force shall be established for a period of nine months, commencing on the date of enactment of this chapter, with duties as specified in subsection (b). Subject to the approval of the Director of the Federal Judicial Center the existence of the Special Task Force may be extended for a period not to exceed one year, if the Special Task Force deems such an extension necessary to complete its work.

"(2) The membership of the Special Task Force shall include the Supervisor of Interpreters for the Southern District of New York, who shall serve full-time as the chairman of the Special Task Force and who shall nominate six additional part-time members to be approved by the Director of the Federal Judicial Center as follows: one certified court interpreter with conference level interpreting experience; one professional interpreter with experience in at least one of the languages set forth in section 1827(b)(1); one court interpreter for the hearing impaired; one professional interpreter with administrative experience; one professional interpreter with academic, research, and test development experience; and one Federal judge with experience and knowledge of court interpreting issues.

"(3) Each member of the Task Force, with the exception of the Federal judge, shall be selected from a different region of the United States with boundaries as follows: Region 1 shall include the First, Second, and Third Federal Judicial Circuits; Region 2 shall include the Fourth, Fifth, and Eleventh and the District of Columbia Federal Judicial Circuits, with the exception of the State of Texas; Region 3 shall include the Tenth Federal Judicial Circuit as well as the State of Texas; Region 4 shall include the Ninth Federal Judicial Circuit; and Region 5 shall include the Sixth, Seventh, and Eighth Federal Judicial Circuits.

"(4) The Task Force, in addition, shall retain such full-time staff and part-time consultants as may be necessary to carry out the responsibilities of the Task Force as set forth in subsection (b).

"(5) Appointments under this subsection shall be made without regard to the provisions of title 5 relating to appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, or any other provision of law relating to the number, classification, and General Schedule pay rates.

"(b) The Special Task Force shall make recommendations and advise the Director of the Administrative Office of the United States Courts with respect to the establishment of initial regulations concerning the languages for which interpreters shall be certified; the proper testing instruments to determine the qualifications of certified interpreters; necessary validation studies related thereto; necessary training programs to assure the availability of certified interpreters; the evaluation and monitoring of the performance of both certified and noncertified interpreters; and the proper educational, training, job-related performance, and experience criteria for otherwise qualified interpreters as defined in subsection (k) of section 1827; the appropriate fees for court interpreters; the feasibility of a certification program for translators of documentary evidence; and all other responsibilities conferred upon the Director by subsection (b) of section 1827. The Special Task Force shall submit its recommendations to the Director in writing within the time period established by subsection (a). The Director shall include within his annual report to Congress under this chapter, a written response to all such recommendations, indicating whether a recommendation has been accepted or rejected and the reason therefor.

"(c) Members of the Special Task Force shall be paid compensation at rates not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule when engaged in the actual performance of his or her duties as a member of the Special Task Force, including traveltime. All members of the Special Task Force shall be reimbursed for travel expenses and allowed a daily allowance in lieu of subsistence as authorized by chapter 57 of title 5 for persons in the Government service who are employed intermittently and are paid on a daily basis, when actually employed.".

(b) The table of sections for chapter 119 of title 28, United States Code, is amended by striking out the item relating to section 1828 and inserting in lieu thereof the following:

"1828. Repealed.
"1829. National Court Interpreters Special Task Force.".

Senator HATCH. Today, we have a number of distinguished witnesses, all of whom bring a unique perspective to this topic, and I want to personally thank all of them for coming and giving this subcommittee the benefit of their wisdom and expertise.

I would like to invite our first two witnesses to the table. They are Judge Thomas G. Gee, of the U.S. Court of Appeals for the Fifth Circuit, and Judge Kevin Thomas Duffy, of the U.S. District Court for the Southern District of New York

Judge Gee is here representing the Administrative Office of the U.S. Courts. He is a member of the Subcommittee on Support Personnel of the Committee on Court Administration of the Judicial Conference of the United States. Judge Gee is a distinguished and very well respected member of the Federal judiciary and we are most grateful for his willingness to appear here today.

We are equally pleased to have Judge Duffy here. From his work on the Federal district court in New York City, he brings a great deal of practical knowledge and experience to this hearing. Judge Duffy has long had the admiration and respect of this committee and we want to thank him for coming.

Judge Gee, we will begin with your statement and then we will proceed to Judge Duffy's statement, and we may want to follow up with some questions. But before we do, could we recognize the chairman of the full committee, Senator Thurmond, for any comments he has.

The CHAIRMAN. Thank you very much, Mr. Chairman. Mr. Chairman, I would just ask unanimous consent to place my statement in the record.

Senator HATCH. Without objection.

### PREPARED STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

Mr. Chairman: I am pleased that today this subcommittee is holding a hearing on the Court Interpreters Improvement Act of 1985. I would like to commend the distinguished Senator from Utah, Senator Hatch, for his interest and effort in assuring that foreign language speaking and hearing impaired parties to Federal judicial proceedings are afforded due process of law as guaranteed under our Constitution.

This bill seeks to ensure that the constitutional guarantees relating to due process of law, confrontations of witnesses, and adequate assistance of counsel are secure for everyone at every stage of a Federal judicial proceeding. While I support such goals, questions exist with regard to the appropriate means by which to attain these goals. Furthermore, while I acknowledge the laudable goal of assuring that only competent interpreters are retained for Federal Judicial Proceedings, we must recognize that very different opinions exist about the feasibility, approach, and cost of doing so. I hope that this hearing provides a full opportunity for these different viewpoints to be voiced.

We have an excellent witness list appearing before the subcommittee today, and I look forward to reviewing the testimony of the witnesses.

Senator HATCH. Judge Gee.

## STATEMENT OF A PANEL CONSISTING OF: THOMAS G. GEE, JUDGE, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY JACK LEETH, SPECIAL ASSISTANT, OFFICE OF COURT REPORTING AND INTERPRETIVE SERVICES, ADMINISTRATIVE OFFICE OF THE U.S. COURTS; CHRISTY MASSEY, LEGISLATIVE AFFAIRS OFFICE, ADMINISTRATIVE OFFICE OF THE U.S. COURTS; AND KEVIN THOMAS DUFFY, JUDGE, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Judge GEE. Thank you very much, Senator. I want to express my personal appreciation and that of the Federal judiciary at large for this opportunity to testify on S. 1853.

I am, as you have noted, Thomas Gibbs Gee. I became a judge at the U.S. Court of Appeals for the Fifth Circuit in August of 1973, which is the last occasion on which I was in this room.

In 1983, I was appointed a member of the Subcommittee on Supporting Personnel of the Committee on Court Administration of the Judicial Conference of the United States, and I appear before you today in that capacity.

I am accompanied today by Mr. Jack Leeth, special assistant in charge of the Office of Court Reporting and Interpretive Services of the Administrative Office of the U.S. Courts, and by Ms. Christy Massey of the Legislative Affairs Office of the Administrative Office.

I have had some practical experience with the problem which is before us and I have attempted to give some study to it, Senator. Although I am an appellate court judge, I sit as a trial judge from time to time and have actually tried cases with interpreters. So I think I have a practical appreciation of the problem.

Senator HATCH. Judge, if you could pull your microphone over?

Judge GEE. Yes, sir; I would be glad to, sir. Can you hear me better now, sir?

Senator HATCH. That is a lot better.

Judge GEE. In looking over the statistics on the experience which we have had, two things stand out, in my view. The first is that our primary problem with interpretation as to volume, at any rate, is Spanish-English.

Of about 40,000 docketing occasions in the course of the last complete court year, about 39,000 of them involved Spanish-English. Now, this is not to say that the other languages are not significant and of importance. They are extremely significant to those who speak only those languages, but our major problem is with Spanish-English.

The second item of experience which we have had, Senator, is that there are very few people in this country who are capable of the level of language skills that is required to interpret effectively. It is a most difficult task and it is not one, we have found, which yields to formal profiles or academic qualifications.

There are people who have been certified by the Office who do not have more than a high school education. Some, in fact, do not have a high school education. There are others who have very extensive academic qualifications who have been unable to pass the test and become certified.

So interpreting is a very difficult and a rather rare skill. According to what we have seen, it almost appears that it may be an inate ability which you are either born with and can enhance or which you do not have.

I appreciate and, speaking for the judiciary so far as I can, we appreciate the urge which has driven the bill. Some of the provisions of the bill will be quite expensive, however, to implement.

It has been our experience that to devise, for example, a test for any one language requires an expenditure of about $120,000. If we are to certify a large number of languages, we are looking at $100,000-plus for the initial test. This is a recurring expense, moreover, because you cannot give the same test over and over year by year or it will become committed to memory. So the test has to be rewritten. Merely the test itself, then, is at that level of expenditure, Senator, exclusive of what it would cost to administer.

In this time of tightening budgets, it seems to us that this may not be a justified expense.

I have one other point of curiosity about the bill, and that is the eight languages which were selected. They are not the eight languages which appear most frequently in our courts requiring interpreters.

I do not know why these particular eight were selected and am simply puzzled, but some of the languages are the most frequent. But one important thing to remember about all this is the great dip in magnitude once you go from Spanish to the next language. I have figures here somewhere on that precise jump; I have my paper dog-earred here.

In the last year for which we had complete figures, there were almost 39,000 docketable Spanish-English incidents. The next most common need for translation was from Italian, of which there were 368. So, you see, there is a vast, vast difference in magnitude between the need for Spanish-English interpretation and all others. The next was Haitian Creole, 344; Arabic, 326, and then it begins to drop very quickly in incidence.

I believe that is all I will trouble you with, Senator, at the present time. I have filed my prepared remarks and I would be glad to answer any questions.

[The prepared statement and responses to written questions follow:]

# PREPARED STATEMENT OF JUDGE THOMAS GIBBS GEE

**Mr. Chairman:**

I want to express my personal appreciation and that of the federal judiciary for this opportunity to testify on S.1853, Senator Hatch's bill to amend the Court Interpreters Act of 1978. I am Thomas Gibbs Gee. I became a judge of the United States Court of Appeals for the Fifth Circuit in August of 1973. In 1983 I was appointed a member of the Subcommittee on Supporting Personnel of the Committee on Court Administration of the Judicial Conference of the United States, and I appear before you today in that capacity.

## IMPLEMENTATION OF THE COURT INTERPRETERS ACT OF 1978

The present Court Interpreters Act, 28 U.S.C. §1827-1828 provides that any person appearing in a federal court who does not speak English well enough to comprehend the proceeding or who is speech and/or hearing impaired, should be provided with a certified interpreter—or if no certified interpreter is available, an otherwise competent interpreter as determined by the presiding judicial officer. Under the present law:

- The Director of the Administrative Office of the United States Courts is required to certify interpreters.
- The Director also fixes the salaries and fees of interpreters.
- Consecutive interpreting is the preferred mode, but summary and simultaneous interpreting if desired by the court are authorized.
- The court pays all fees for interpreting for proceedings arising out of criminal or civil actions initiated by the United States.

When Congress passed the Court Interpreters Act in 1978, there was no certification program for any kind of interpreters in the United States or abroad. The Administrative Office then sought advice on how best to certify interpreters from the leading academicians, professional interpreters and state officials involved with interpretation in court. These included: directors of interpreting programs at Georgetown University, Monterrey Institute, Defense Language Institute, American University, and University of Sterling (Scotland). Additionally, the chief of the

Interpreter Branch at the Department of State, the chief of the Interpreter Branch at the Organization of American States, the chief Spanish/English interpreter of the United Nations, and the presidents of several professional associations such as The American Association of Language Specialists, the American Society of Interpreters, the Court Interpreters and Translation Association, and court interpreter associations in Texas, California, and others were consulted. Attached as Appendix B are reports to the Director written in December 1979 and January 1980 which synthesize the results of over 70 interviews.

The most salient issue highlighted was that certification must be based on a skills demonstration. Any test of skills would necessarily be "criterion-reference scored." A criterion referenced score is an objective standard that must be met, such as 70 percent of the answers must be accurate to get a "C+." This is in contrast to scoring on the curve, in which the high score would be an "A" no matter what percentage of correctness it represents. Thus, federal certification does not and cannot confer status on the best of those inadequately performing. It identifies only those who actually can interpret at the level needed in federal proceedings. Nothing has occurred in the past six years to change that fundamental fact.

The Administrative Office has created a uniquely objective credentialing process. It has avoided creating any "artificial criteria" which would lull the court and litigants into believing that they were being provided good interpreting services, when in fact they very well might not be. For example, one of the candidates for certification has a Ph.D in Spanish, has lived several years overseas, is beautifully fluent in Spanish and English, and has interpreted both in state and federal courts. If the Administrative Office looked at only his "paper qualifications," it would label him a qualified interpreter. Yet he cannot interpret, cannot pass a test, and was recently removed from a trial. Like him, there are many others whose resumes appear on the surface to be excellent. They have studied interpreting, have advanced degrees, and have worked in courts for years. They are, however, not even minimally qualified.

Dr. Carlos Astiz, State University of New York at Albany, did a study of the background of the candidates who took the oral portion of the Administrative Office's first certification test. He wished to determine if there were any profiles he could identify which would indicate competence as an interpreter. None emerged. The

Administrative Office has certified interpreters who do not have a high school diploma as well as those who have Ph.Ds. Interpreters who have never interpreted a day in their lives and those who have worked for 20 years in the most prestigious conferences have been certified. The Administrative Office has also certified interpreters who have no training of any kind and those who have graduated from the master's program at the Monterrey Institute. It has also rejected many candidates in each of these categories.

The current law requires the courts to use certified interpreters "where available." This language means that, if the court is advised of the need for an interpreter sufficiently in advance to contact an interpreter, the court may hire an interpreter off the certified list, regardless of residence in that court's district. For FY 1985, the federal courts spent approximately $2,500,000 for interpreter services, including staff interpreter positions and free lance fees.

There are very very few persons in the United States who can interpret with the degree of precision and accuracy required at the federal court level. The largest bilingual population in the United States consists of Spanish/English speakers. The Administrative Office has given 7,000 tests (some persons have taken the test more than once), has spent more than $1,000,000 in test development and test adminis'ration, and has been able to certify only 292 interpreters. Even after that level of effort, not every court has a certified Spanish/English interpreter available. Nevertheless, most courts have made every possible effort to obtain a certified interpreter to protect the constitutional rights of defendants. To that end, courts in Maine draw certified interpreters from Massachusetts or Virginia; Cincinnati draws interpreters from Chicago; Kentucky and Tennessee draw interpreters from Missouri and the District of Columbia. Attached as Appendix A is a list showing each court that used a Spanish/English interpreter, and the use of certified versus non-certified use. In those courts which use non-certified interpreters regularly, (Arizona, California (S), Florida (M) and Texas (S), there are not enough certified interpreters to handle all of the proceedings. Generally, non-certified interpreters are restricted to interpreting at initial appearances or arraignments. One court in the Southern District of Texas, Laredo, has tried for several years to recruit a certified interpreter, but has been unable to do so.

In 1984, the federal courts used interpreters for 61 languages. Presently, although the only interpreters certified by the Administrative Office are for Spanish/English proceedings, the Director recognizes as certified the interpreters for the speech and hearing impaired who hold the legal skills certificate issued by the Registry of Interpreters for the Deaf. The Administrative Office also has funded the development of a Navajo/English legal dictionary for interpreters in those courts where Navajo interpretation presents a peculiar problem for the courts. When funding permits, certification in Navajo/English will be next.

Additionally, when courts have difficulty locating interpreters in languages other than those mentioned, the Administrative Office can contact the Department of State, which maintains a roster of conference level interpreters. In this manner competent interpreters have been identified for many proceedings. For example, a Japanese interpreter was located for a trial in Puerto Rico; a Korean interpreter was located for a trial in Maine; a Russian interpreter with security clearance was located for a spy trial in California; a Serbo-Croation interpreter was located for a trial in Del Rio, Texas; and a Polish-gypsy interpreter was located for North Carolina. In addition to this resource, the courts can also draw upon the resources of The American Association of Language Specialists (TAALS) and the American Society of Interpreters (ASI), whose membership lists the Administrative Office keeps as additional resources.

## Judicial Conference Recommendations as to Current Law

The number of proceedings, separate as docketable events, before United States District Judges and Magistrates in 1984 was over 684,000. These include trials, arraignments, motions, sentencings and others. The total number of proceedings requiring interpreters was 40,222. Of those 38,807 were in Spanish. The full list for 1984 as reported to Congress in the Director's Annual Report is attached as Appendix C. Interpreted proceedings constitute only 6% of all federal court proceedings. Proceedings requiring those languages other than Spanish constitute only 1/3 of 1% of all federal court proceedings. While these numbers do not in any way indicate that the Administrative Office or the courts treat interpreting needs for non-Hispanics cavalierly, they do demonstrate the reasons for concentrating on a resolution to the most pressing problems faced by the court for proceedings involving Spanish speakers.

Therefore, due to the costs of certification and the infrequency of the use of other languages, the Judicial Conference in 1982 recommended to Congress that the Court Interpreters Act be amended to clarify that the Director of the Administrative Office has the discretion to limit the languages for which he will establish certification programs.

## The Court Interpreters Improvement Act of 1985

The bill before us today, while maintaining the same rights to an interpreter as current law, extends the use of certified interpreters, designates languages for certification, requires the Director to specify eligibility criteria for "otherwise qualified interpreters," extends the Director's authority to include supervision of court personnel on the job, and circumscribes the Director's authority to fix pay and fees.

The Committee on Court Administration will recommend to the Judicial Conference, in March, that the Conference support extension of the use of interpreters to grand jury proceedings, but will oppose other provisions as detrimental to the courts and to the American taxpayers. I hasten to point out that the Committee's recommendations will not become final until approved by the Conference. At this point I will discuss each provision of the bill examined by the Committee.

### I. Grand Jury Proceedings

Sections 2 and 3 will require the use of certified interpreters for grand jury proceedings. The right to an interpreter in a grand jury proceeding more than likely inadvertently was omitted when the current law was enacted. Nowhere in the American system of justice is there more potential to destroy a person's reputation than through an ill-founded indictment. Relief for the innocent cannot be gained until exoneration at a trial. Even then, permanent scars to a person's standing in the community that can never be erased may remain . There has been one celebrated case in which it was discovered that poor interpretation led to inaccurate indictments. Fortunately, the court was able to analyze the interpreting and quash part of the indictment so that no major harm finally resulted. Therefore, we support extending the use of court interpreters to grand jury proceedings.

## 2. Mandatory Certification

Section 4 of this bill mandates that the Director of the Administrative Office certify interpreters in eight additional languages. This provision runs directly contrary to the Judicial Conference action of March 11-12, 1982, requesting that the Administrative Office transmit to Congress a clarification of the law that would vest in the Director the discretion about which languages to certify. A copy of Conference proceedings concerning the Court Interpreters Act is attached as Appendix D. Exercising the Director's discretion was proposed because of the infrequent use of languages other than Spanish and the cost of language certification ($120,000 plus per language for materials development plus whatever test administration costs would be incurred). The Administrative Office and the courts have been successful in many cases in enlisting Department of State conference interpreters for court work in some of the other languages specified in this bill, as addressed earlier.

A history of use of each of the languages follows. The numbers represent individual proceedings and not defendants. A single defendant is often involved in several different proceedings.

| | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 |
|---|---|---|---|---|---|---|
| Spanish | 25,986 | 23,394 | 29,754 | 30,372 | 38,224 | 38,807 |
| Italian | 29 | 45 | 91 | 47 | 100 | 368 |
| Chinese (all dialects) | 59 | 17 | 57 | 131 | 205 | 395 |
| Japanese | 35 | 5 | 22 | 61 | 40 | 55 |
| French (Creole)(Haitian) | 0 | 223 | 223 | 321 | 161 | 344 |
| Korean | 6 | 19 | 27 | 67 | 117 | 187 |
| Portuguese | 4 | 27 | 22 | 37 | 116 | 102 |
| Arabic | 7 | 96 | 59 | 40 | 124 | 326 |
| American Sign Language | 8 | 12 | 12 | 18 | 24 | 29 |

These numbers vary from year to year and often represent only a few defendants.

Some of the languages identified for mandatory certification by the Administrative Office are not used as frequently as those specified in this bill. For example, 22 languages are used more frequently than Sign language. Four languages are used more frequently than Portugese, but are not included. Seven languages are used more frequently than Japanese but not singled out by the provision.

It would cost more than $1,000,000 to develop certification tests in these eight additional languages. These are recurring costs because tests must be rewritten before reuse in subsequent years. Each test must be validated and equated. Test construction and validation would be at least $120,000 per language, each time the test is offered. The administrative costs would be at least an additional $1,000,000 on a recurring basis or again about $120,000 per test administration each time it is offered. The end result, if the same high standards are upheld in these languages as developed for Spanish/English, might be the identification of only four or five interpreters—if any—in any of the given languages. Is it wise to spend these kinds of funds for such tenuous results?

Even after certifying interpreters, the Administrative Office cannot guarantee their availability to the courts. They could be busy on conference business, or unwilling to leave their family just to help a federal court. This problem would be even more acute with rarely used exotic languages. Moreover, the bill does not clarify which version of Chinese should be certified. If Congress wants Mandarin and Cantonese and Taiwainese certified, that would increase the costs and the complexities of its mandate. In addition, several of the languages mandated have dialectal differences depending on the geographical origin of the language for which interpretation is requested, which also complicates objective testing.

There are very few persons qualified to both develop the tests and administer them. As noted above, a person with a Ph.D in a language does not necessarily know how to interpret the language, as this requires a different skill entirely. In many cases, it would be a self certification process.

### 3. Standards for Non-Certified Interpreters

Section 4 (b)(2) of the bill requires the Director to establish criteria binding a judicial officer in the selection of an "otherwise qualified interpreter," i.e., any non-certified interpreter. This provision sounds very logical—i.e., if there is no certification program for a language, at least the Director should set out some parameters that guide judges in their selection and that bar the truly "incompetent" from the courtroom. However, after analysis of research data gathered during the testing process of 7,000 candidates seeking Spanish/English certification, it is clear that a person either can or cannot interpret at the skill level required in federal court, regardless of years of experience on the job, educational attainment, or training. There is a natural aptitude which can be enhanced, but not created. In fact, if it were possible to develop such criteria, certification simply would not be necessary.

Two state court systems (New York and California) have set up credentialing processes which involve rudimentary testing. The tests given bear no resemblance to the job requirements. However, because these court systems have given their imprimaturs to these credentials processes, the judges and litigants are led to believe that the interpreters have adequate skills when, indeed, they do not. Most interpreters with credentials from these two states cannot pass the federal test.

If the Director of the Administrative Office informs a court that a person is "otherwise qualified," the judge and the public have a right to be able to depend on that information. However, the Director cannot guarantee a person's ability based on "paper credentials."

Therefore, this proposed change in the law could conceivably tie the court's hands. What if there is no interpreter in Apache who can meet the "otherwise qualified" criteria? Is the judge to dismiss the case? What if the only "otherwise qualified interpreter" is not available? Is the judge to postpone the case? What if the interpreter refuses to work for a reasonable fee? Is the judge to hold him in contempt?

Some tasks are better left undone because to do "something" might be more dangerous than doing "nothing." Any designation of experience, education, or training would be simply an artificial device that does nothing to identify "otherwise qualified" persons for court work, and thus would be misleading. Such criteria would necessarily apply generically across all languages. If the Director were to state that to be labeled "otherwise qualified" an interpreter must have had two year's training, four year's experience at a comparable level of difficulty, and a bachelor's degree in a language, most likely no such person would be available in Farsi. Apache, or Hindi. How would the court hold the trial? What would this mean in the face of an appeal? It is best that the criteria of "otherwise qualified" be left to the court without imposing artificial, meaningless criteria as an obstacle to conducting the proceedings. The court, however, should be vigilant in its choice.

### 4. Supervision of Interpreters

Section 4 requires the Director to supervise certified and "otherwise qualified" interpreters on the job. Supervision or performance appraisals of court employees by the Director is contrary to the Administrative Office's statutory role in the federal judiciary, vis-a-vis the courts, and delves into direct management of the court's affairs. Each court manages its own affairs and supervises its own personnel. The Administrative Office is without authority to do more than assist them. That is reason enough to strike this proposal, but even if it were conceptually good, it would require a staff in the Administrative Office of at least two more persons, presumably at the GS-13 level, who would need to travel to the courts and monitor the interpreting in Spanish. In the case of exotic languages, the court would need to pay an interpreter and the Director would need to contract with a language specialist to determine if the interpreter did an accurate job. The cost of more supervision as suggested by the bill is in excess of $250,000 per year on a continuing basis.

In response to this perceived need for supervision some courts have supervisory interpreters whose precise job is to monitor and evaluate the performance of both staff and free lance interpreters, thus enabling the court to retain its autonomy. The court may always, if it so desires, request assistance from the Administrative Office. The best organized and most complex interpreting service is that run in the Central District of California. There the supervisor, Ms. Sofia Zahler, speaks five languages herself and actively monitors those languages in her repertoire, as well as other more exotic languages. She tests other interpreters and offers weekend workshops for all languages other than Spanish. In addition, she thoroughly checks the references of each of the interpreters. A sample job description for the supervisor is attached as Appendix E.

### 5. Court Interpreter Fees

Section 4 also requires the Director to set fees in accordance with those set by the Department of State. The Director currently sets salaries and fees for interpreters based on a comparison with full-time positions in the Executive Branch and international organizations. Currently, interpreters are classified at JSP-10-11-12, with supervisors earning a JSP-13. The Department of State pays $260.00 per day. The Administrative

Office permits $175.00 which, before Gramm-Rudman-Hollings, was to be adjusted. The Committee believes that a GS-16-4 salary, which is equivalent to the daily fee of the Department of State, is completely out of line with other professions serving the courts and other public institutions. Some free lance interpreters work every day for the court or the Department of Justice. It would raise interpreting costs by 50% - from $1,565,267 for fiscal year 1985 to approximately $2,300,000 per year. Attached at Appendix F is a list of courts and the fees they paid for interpreter services for all languages for fiscal year 1985.

In order to save on free lance fees—and in order to provide more sustained services—the Judicial Conference has requested, through the budget process, six more permanent positions for the courts. Congress has denied those positions three times.

The vast majority of court interpreting services in this country are required in state and local courts. The Superior Court of Los Angeles uses over 100 interpreters daily. The court pays $136.00 per day. In state and local courts, with few exceptions, the quality of interpreting is untenable. The National Institute of Justice is publishing the research of Dr. Carlos Astiz about interpreting services he reviewed in state courts. His research demonstrates that for the most part state and local courts do not protect the constitutional rights of defendants to understand fully the proceedings against them.

When state and local court administrators try to compete with even the present federal fee structure, they are unable to do so. Should an undocumented alien who might get sent back across the border have such superior interpreting services in federal court while a person accused of murder, with a possible death penalty, get poor interpreting services in a state court? This bill does not—and cannot—remedy these situations. But must it remove all hope that the states can compete with the federal government for the few competent interpreters available?

## 6. Training Programs

Section 15 suggests the development of training programs to assure the availability of interpreters. The inclusion of developing necessary training programs takes the federal judiciary into heretofore unauthorized and uncharted territory. Training interpreters, if appropriate aptitudes could be determined and persons possessing them found, would be a very expensive and questionable procedure. First, generally there are enough persons identifiable with required skills in the language of major need (Spanish) for federal courts. Second, there are no known criteria, such as agreed upon aptitude tests, for admitting a candidate to a training program. Therefore, all sorts of inequities would arise in choosing students, especially if free training were available. Training monies could very well be spent for naught. Third, training institutions exist that are begging for students. Fourth, there is no guarantee that any person trained would be available when needed for the federal court because they would not be employees. At the present time, the Administrative Office has no training authority and the Federal Judicial Center may train only federal employees.

In the larger metropolitan federal courts, the interpreter supervisors conduct "orientation" programs for exotic language interpreters to familiarize them with federal court procedures, but they cannot attempt to teach a bilingual person who cannot interpret how to interpret. It is a fact that there are not enough competent interpreters in all languages, even Spanish, to cover all the state and local courts, but if training for them is advisable, it should be done through existing schools or—if a federal unit is necessary—through the Department of Labor, the Department of Education, or the National Center for State Courts, etc., not the federal court system.

The Committee supports training for interpreters—even the Department of State cannot identify excellent interpreters in all languages for the most important diplomatic missions—but does not support training in the manner prescribed in the bill—especially not by the federal court system.

### 7. National Court Interpreters Task Force

Section 15 creates a National Court Interpreter Task Force, for a period of nine months subject to extension. Chairman of this task force is to be the Supervisor of Interpreters in the Southern District of New York with members to be appointed by the chairman subject to the approval of the Director of the Federal Judicial Center. The chairman of this task force is to be paid at the rate of GS-18 with expenses and with such staff as determined necessary by the Task Force. This Task Force would advise the Director on all aspects of certification: (a) test development and validation; (b) supervision of interpreters on the job; (c) qualifications for "otherwise qualified interpreters;" (d) necessary training programs to assure the availability of certified interpreters; (e) fees for interpreters; (f) feasibilitv of certification of translators; and (g) other matters relating to interpreting in federal courts. While the Director would not be bound necessarily by the Task Force recommendations, he will be required to state his reasons to Congress should he reject any of its suggestions. Some of these areas already have been discussed above.

I hasten to point out that the appointment of members of the Task Force by the Chairman might constitute a violation of the Appointment Clause of the Constitution, Art. II, Sec. 2, which requires appointment by the President, Courts of Law, or Heads of Departments. For Congress to name a specific person to chair the Task Force might also be a violation.

The Administrative Office has had, and continues to enjoy, the benefit of advice from the most distinguished interpreters from the United Nations, the Organization of American States, and the World Bank; of eminent scholars of interpreting and test development from Georgetown, Monterey, Stanford, and Arizona universities and the Office of Personnel Management; and it has consulted extensively and continuously with federally certified staff interpreters about ongoing problems and how best to resolve them. These resources are available for spontaneous consultation at any time—and if enlisted for actual test development or test administration—are available at fees/rates well below a GS-18 level.

The proposed task force could not complete its work in two years, working full-time, let alone in one year. Interpreter certification test development has been an interdisciplinary process. Recommendations to change the testing instruments now in use would require a complete revision of the certification program. New validation studies of all of these tests would require time to develop and apply. Six persons at the GS-18 level, plus staff, space, and consultants would cost a minimum of $600,000 in salaries. Travel and other costs would add an additional $100,000 for a total of $700,000 annually. Moreover, during the time the Task Force is working, the business of the courts from which the interpreters are drawn could be disrupted.

### 8. Special Interpreting Services

Section 15 repeals 28 U.S.C. §1828 which provides for special interpreting services such as sophisticated electronic interpreter equipment like the sound proof booths similar to those of the U.N. and other conference-like settings. In criminal cases the services are to be paid for by the Director. In civil cases, these costs are to be apportioned among the parties; changes to 28 U.S.C. §1828 would also make simultaneous interpreting the preferred mode, except for foreign language witness testimony which would be done consecutively.

Since the passage of the Act, no such special interpreting services as contemplated in §1828 have been required. Services in multidefendant cases have been handled on a less sophisticated basis, involving simple electronic headsets and microphones. Many courts have acquired this equipment and no court has ever been denied equipment to date. Section 1828 was written into the original law because one interpreter in an Italian criminal case charged the courts an exorbitant sum for very elaborate equipment. The provision was necessary to ensure that certain costs did not get out of hand.

In theory, no court should authorize summary interpretation because interpreters are not qualified to determine which portions of a proceeding are important to a defendant or those portions which, if not interpreted, will impede his ability to participate in his own defense, i.e., to confront witnesses against him. For some of the 61 languages used in 1984, however, no interpreter will ever be found who can interpret simultaneously. In fact there seems to be no need for the modification of this section in practice because courts have become accustomed to appropriate interpreter usage, which does not include such elaborate accoutrements as U.N. booth-type equipment. As a practical matter, most judges require simultaneous interpreting of the proceedings with the exception of foreign language witness testimony. If courts with high volumes of interpreted proceedings wish to provide sophisticated booths when they construct or remodel their courtrooms, they could be accommodated by the Director.

## Gramm-Rudman-Hollings Implications

The Judiciary is presently searching for ways to absorb $42 million without sacrificing services to the American public. The Judicial Conference hopes to be able to maintain the same high level of interpreting services that it has instituted in the 95 district courts. To take on new additional requirements and services would be impossible with the anticipated levels of funding presently available—and even more impossible with the anticipated future cuts in funding. The total minimum sum needed to implement these new provisions would be $3,500,000 annually, which would not be available absent the cutting of essential services.

## CONCLUSIONS

1. The Committee has recommended that the provisions of the Court Interpreters Act should apply to grand jury proceedings.

2. However, the Judicial Conference has requested an amendment to the Act which would vest in the Director of the Administrative Office of the United States Courts the determination of languages for which certification will be developed.

3. Any designation of criteria identifying "otherwise qualified interpreters" would be misleading and artificial. The Administrative Office and an independent researcher tried to find a pattern in the background of those who took the certification tests—and could find no pattern. If such could be developed, there would be no need for certification of Spanish or any other language interpreters. Criteria for "otherwise qualified" interpreters constitute the cosmic question among credentialing panels. None have been identified in the six years since interpreter certification has been instituted.

4. The role of supervision of court employees historically has been left to the courts themselves. Some of the courts have supervisory interpreters whose job it is to monitor performance of all interpreters in their courts. However, to pretend to monitor from the Administrative Office—or to hire persons bilingual in the 61 languages used in federal courts for monitoring—seems unwise.

5. Mandating the Director to pay fees equivalent to those paid by the Department of State opens to question the wisdom of reimbursing an interpreter on the scale of a GS-16-4. Competency should be rewarded, skills should be appreciated, but many helping professions in American society are not paid on such a high scale.

6. The federal judiciary should not be required to train interpreters over whom it has no control or with whom it has no employment relationship. There are interpreting courses available at many reputable institutions. Those interested in the interpreting profession, just as those interested in medicine, law, teaching, and other endeavors should find their own training. That is not to say that there is not a great need for training is for state and local court interpreters. However, if public funds can be made available, they should be channeled through institutions that prepare personnel at those levels.

7. A National Court Interpreters Special Task Force would be redundant to the efforts and advice offered so graciously by the leading academic and professional societies in the country. There is no need for an expensive body to be instituted at great cost to answer the "cosmic question" regarding what might constitute criteria for "otherwise qualified" interpreters when acknowledged experts have been unable to do so. In addition, the appointment power of the Chairman, and indeed, that of Congress to designate the Chairman, might violate the Appointments Clause of the Constitution.

8. There might be some reason to make simultaneous interpreting the preferred mode. It would make the law conform to the practice of Spanish/English interpretation. However, a change in the law will do nothing to reduce the reality that simultaneous interpreters do not exist in some languages, and that summary interpretation, no matter how repugnant to the purists, is the only form of interpretation possible in some languages.

Appendix A

## DISTRICT COURT USE OF SPANISH/ENGLISH INTERPRETERS IN DOCKETABLE EVENTS

AS REPORTED FOR CALENDAR YEAR 1984

| District | No. of Interpreters | |
|---|---|---|
| | Certified | Non-Certified |
| Alabama (N)..... | ... | ... |
| Alabama (M)..... | ... | ... |
| Alabama (S)..... | 11 | 9 |
| Alaska.......... | ... | ... |
| Arizona......... | 1,569 | 380 |
| Arkansas (E).... | ... | ... |
| Arkansas (W).... | ... | ... |
| California (N).. | 268 | 3 |
| California (E).. | 318 | 17 |
| California (C).. | 2,133 | 5 |
| California (S).. | 4,270 | 300 |
| Colorado........ | ... | 36* |
| Connecticut..... | 5 | 53 |
| Delaware........ | 5 | ... |
| D. C............ | 38 | ... |
| Florida (N)..... | 1 | 17* |
| Florida (M)..... | ... | 329* |
| Florida (S)..... | 7,907 | ... |
| Georgia (N)..... | 75 | 7 |
| Georgia (M)..... | ... | ... |
| Georgia (S)..... | 1 | 6* |
| Hawaii.......... | ... | 8* |
| Idaho........... | ... | ... |
| Illinois (N).... | 4 | 85[1] |
| Illinois (C).... | ... | 16* |
| Illinois (S).... | ... | ... |
| Indiana (N)..... | ... | 5* |
| Indiana (S)..... | ... | 7* |
| Iowa (N)........ | ... | 7* |
| Iowa (S)........ | ... | 14[2] |
| Kansas.......... | ... | 74[2] |
| Kentucky (E).... | 3 | 1* |
| Kentucky (W).... | ... | 12* |
| Louisiana (E)... | 180 | 68 |
| Louisiana (M)... | ... | ... |
| Louisiana (W)... | ... | 17[2] |
| Maine........... | 20 | 16* |
| Maryland........ | 76 | 2 |
| Massachusetts... | 44 | 1 |
| Michigan (E).... | ... | 28* |
| Michigan (W).... | ... | 9* |
| Minnesota....... | 10 | 36[3] |
| Mississippi (N). | ... | ... |
| Mississippi (S). | 4 | 37* |
| Missouri (E).... | 13 | 1* |
| Missouri (W).... | ... | ... |
| Montana......... | ... | ... |
| Nebraska........ | ... | 34* |
| Nevada.......... | 11 | ...* |
| New Hampshire... | 38 | 2 |
| New Jersey...... | 51 | 77[3] |
| New Mexico...... | 298 | 10 |
| New York (N).... | ... | 35[3] |
| New York (E).... | 788 | 11 |
| New York (S).... | 2,081 | ... |
| New York (W).... | ... | 48* |
| N. Carolina (E). | 3 | 1 |
| N. Carolina (M). | 14 | 3 |
| N. Carolina (W). | ... | 5* |
| North Dakota.... | ... | 7* |
| Ohio (N)........ | ... | 4* |
| Ohio (S)........ | 1 | ...* |
| Oklahoma (N).... | ... | ... |
| Oklahoma (E).... | ... | ... |
| Oklahoma (W).... | 6 | 5[4] |
| Oregon.......... | ... | 49* |
| Pennsylvania (E) | 2 | 18* |
| Pennyslvania (M) | 4 | 4* |
| Pennsylvania (W) | 10 | ... |
| Puerto Rico..... | 2,088 | ... |
| Rhode Island.... | 15 | 30[3] |
| South Carolina.. | 16 | ... |
| South Dakota.... | ... | ... |
| Tennessee (E)... | 5 | 2 |
| Tennessee (M)... | ... | ... |
| Tennessee (W)... | 1 | ... |
| Texas (N)....... | 60 | 83 |
| Texas (E)....... | ... | ... |
| Texas (S)....... | 5,364 | 2,264[5] |
| Texas (W)....... | 5,587 | 202 |
| Utah............ | ... | 45* |
| Vermont......... | ... | 7* |
| Virginia (E).... | 7 | 22 |
| Virginia (W).... | ... | ... |
| Virgin Islands.. | ... | 27* |
| Washington (E).. | 34 | 77 |
| Washington (W).. | 30 | ... |
| W. Virginia (N). | ... | ... |
| W. Virginia (S). | ... | ... |
| Wisconsin (E)... | ... | 18 |
| Wisconsin (W)... | ... | 9 |
| Wyoming......... | ... | ... |
| | 33,469 | 4,705 |

*No certified Spanish interpreter resident in district

[1] A certified interpreter now is used
[2] No trials
[3] Lack of certified interpreter available
[4] Only one available
[5] Court has tried to recruit certified staff but cannot

Appendix B

UNITED STATES GOVERNMENT

# memorandum

DATE: November 2, 1979

REPLY TO ATTN OF: Court Interpreters Act Implementation Committee,
David Croyle, Dewey Heising, Stafford Ritchie, Jon Leeth

SUBJECT:

TO: William E. Foley, Director

This Committee has finished its preliminary review of the current interpreting situation in the U.S. Courts. A written copy of the report presented by Jon Leeth at the Senior Staff Meeting on October 22 is attached for your review.

Unfortunately, there is no certification program adequate for the needs of the Federal courts. Therefore, we must develop one.

After discussing the various options to implement the certification program, the Committee recommends the adoption of the following plan:

> Certification should result only from passing a rigorous test designed to meet the wide variety of interpreting needs of the Federal courts; certified interpreters would provide high-quality interpreting to ensure an accurate record of the court proceedings and to enable all parties present to adequately participate in the proceedings.
>
> Because there is no institutional expertise already developed for court interpreting, the Administrative Office should develop and administer the prototype test. This effort should be the principle responsibility of Jon Leeth. In doing this, he would use the best available consultants from a variety of institutions and interpreting backgrounds. This recommendation stems from the following considerations:
>
> 1. Any institution would need to use basically the same consultants as we.
> 2. Any contractual arrangement with a university would be more costly.
> 3. We should have direct control over test standards.
> 4. The certification program can get underway more quickly if we do not have to negotiate institutional contracts.
>
> The first certification test should be developed for interpreters of Spanish because of the sheer volume of cases in the courts.
>
> Development of certification tests for other languages should be held in abeyance until adequate statistics of the needs of the courts are available.

Those salaried interpreters used by the courts who achieve certification should be classified at the JSP 10-11-12 range, depending upon experience and the interpreting situation.

The attached budget shows the estimated costs of this plan through FY 1980.

The Committee hopes to have final certification for the Spanish language substantially concluded by the end of June, 1980. To achieve this goal, we should begin recruiting our consultants and establishing test development dates.

Concurrently with the development of the Spanish Test, we will continue our review of the interpreting program in order to make administrative recommendations which would upgrade the service provided in the courts.

Disapproved____________________
Director

Approved____________________
Director

cc: Mr. Spaniol
Mr. Garabedian
Mr. Macklin
Mr. Imlay
Mr. Johnson

---

UNITED STATES GOVERNMENT
memorandum

DATE: October 25, 1979

REPLY TO ATTN OF: Jon A. Leeth

SUBJECT:

TO: David Croyle, Dewey Heising
and Staff Ritchie

Preliminary Report
Court Interpreter Act Implementation
October 25, 1979

Since beginning to work on implementation of the Act, I have had interviews with about 70 persons, in and out of the court setting. These include 11 Judges and Magistrates, 8 Clerks, 26 court and conference interpreters, 10 academic professionals and 15 others, including state officials and representatives of the speech and hearing impaired. I have performed job audits of interpreters as well as listened to their performance during trials and other courtroom appearances.

The present picture is certainly complex. In some instances, the courts hire very good free lance interpreters. In a couple of instances, we have good full-time employees. But my basic impression is that if we design a certification program that permits many of those now working to continue, we have done something terribly wrong.

The Court Interpreter Act was passed because of intense lobbying efforts by a number of parties. Those groups that urged the adoption of the Act are maintaining a strong interest in its implementation. Professional interpreters, academic linguists, and now judges and magistrates are looking over our shoulders. The interpreters want professional recognition for their trade and better pay; academicians are looking at special interpreter courses that they can develop; judges don't want problems. Some judges are increasingly aware of the possibilities for reversals because they do not use a certified interpreter.

Basically, however, the common view among most court personnel is that anybody who speaks two languages can interpret in the court. One interpreter likens this attitude to that which would have you believe that anybody who has two hands can play the piano. On the contrary, court interpreting is a seriously demanding task, requiring specialized vocabulary, aptitude, and techniques which are not easily acquired.

When called by a Clerk in a southern district who related his problem in locating a Spanish/Portuguese interpreter, I recommended a professional from Texas. Upon checking back, I was told that the judge probably would use a Spanish-speaking army sergeant from a local base, or the lady who teaches his child Spanish in high school. I requested that the clerk tell the judge that that was a little like having a Justice of the Peace try the case.

As I indicated, in many instances, the interpreting is calamitous. Judges and magistrates use secretaries and clerical staff as interpreters. Persons who have never studied Spanish for an hour in their lives are interpreting for defendants who speak only Spanish. In some cases which I observed, the interpreter did not understand Spanish well enough to know what the defendant was saying—so he substituted his own perception of what the defendant must have said for the actual testimony.

Traditionally, anyone has been able to submit a resume, stating that he is a qualified interpreter. Nobody checks credentials or references for free lancers. Not until the interpreter is in the courtroom does the problem appear. In court after court, judges express their concern that they have no assurance that they can rely absolutely on the interpreter. Many times, particularly in the exotic languages, they have trouble with the interpreter's ability to express himself in English.

Presently there are 13 full-time salaried court employees classified as interpreters. Some of those are capable of only rudimentary interpreting. For a complicated trial, the courts replace them with free lancers. In Spanish-speaking areas, judges note that attorneys and jurors often object to interpretations. Judges and magistrates who speak some Spanish note that the quality of interpreting is sometimes shaky. One labeled the present system a charade.

Nobody has ever been trained as a court interpreter before entering the courtroom. All of our personnel have been hired and thrown into the courtroom on a sink-or-swim basis. It has been a uniformly harrowing experience. Arizona is now trying to hire a third interpreter in as many months. The last one worked a week and decided that she could not master the court vocabulary and verbatim interpreting. She had no courtroom terminology in either language. Attorneys particularly criticize the lack of training/orientation in ethics. Many feel that the interpreter also wants to be the lawyer.

Presently among our full-time employees, there is confusion on their role. Nobody follows the same job description. For example, some interpreters do not interpret the proceedings for the defendant at his table, but only interpret for witnesses on the stand. Some interpret only for the court, while the defendant uses his own interpreter so that he might communicate with his counsel; some interpreters certify wiretap transcriptions by DOJ interperters. . . some transcribe the wire taps directly because it is easier to transcribe them than to try to correct badly done work for certification. Some interpreters interpret for everybody in the courtroom -- prosecution witnesses, defense witnesses, the defendant, between the defendant and his counsel. Some interpreters only translate written materials. Some do all of the above routinely.

Administratively, full-time court interpreters may be assigned to a chief judge, individual judges, or the clerk's office. Free lancers may be employed nearly full-time at rates that far exceed a reasonable fee and given an office in the courthouse from which they can conduct all of their private interpreting business. It's convenient to have them at hand (and would seem to cut their business overhead expenses).

Much of this sorry picture is due to the self-perpetuating cycle. There is lack of professionalism in court interpreting because really competent people earn more elsewhere; until one has better people, the quality will not improve. While some interpreting could be improved through training, many full-time and free lancers do not have sufficient language skills to be able to improve their performance.

Fees for free lancers range in Federal courts from a low of $42 a day in Tucson (about a JSP-4) to $20 an hour set by Judge Marshall in Chicago. Good interpreters usually earn $20-$35 an hour for depositions or $125-$150 a day for conference interpreting. Our direct hire interpreters were recently authorized up to a JSP-7 (Some clerks don't want to promote their interpreters to that level because they don't feel that they deserve a raise.) Obviously, a profession that requires a person who has lived in a foreign country for several years, who has had formal education in two languages, who reads a variety of publications in two languages on a constant basis, who is manifestly interested in words, who is mentally quick and who has the self-assurance to handle the pressure of working in a charged situation where defense and prosecution attorneys will quickly challenge them if it will help their case (to say nothing of the pressure that judges can apply), and a person who can physically talk for hours on end, normally, would be sought after in many well-paying situations. The courts are not competing for these persons even in cities like Brownsville, Texas where persons with these qualities are sought by private commerce.

There are almost no statistics about the use of court interpreters. Even though the Act requires the AO to report annually on the number of requests for court interpreters, the number of times interpreters were provided, and their effectiveness, almost no district court is keeping any of those records. Therefore, it is almost impossible to make valid recommendations about the number of full-time positions required by the courts, or the distribution among the districts.

Because two States are planning to certify interpreters for their courts, and Los Angeles County has a certification process in place, I reviewed their efforts to determine which aspects we could adopt in Federal certification.

New York State basically views interpreter positions as opportunities to employ minorities. Therefore, their test will be very lax and will screen out only the most inept; California State officials tell me that their certification tests cannot be rigorous because they are unwilling to pay salaries required to draw well-qualified personnel to small towns and county courts. They, therefore, must lower their state requirements to be able to certify persons already in those areas. Los Angeles County has a more rigorous test, but still does not approach our needs.

Parenthetically, the written portion of the California State Certification Test was administrated on September 29. California passed its law in July 1978. Oral tests will be administered in November.

Reactions to the California test are very illuminating. The California Court Interpreters Association protested the exam, pointing out that 32 questions out of 120 were misleading, poorly constructed, incorrect grammatically in Spanish, and/or confusing because of typographical errors.

Federal Court Certification is looked at by interpreter organizations and academicians as the opportunity to set high standards for the profession and give interpreters their due recognition. Additionally, private attorneys and agencies who do depositions will begin to look for a Federal certification as a guarantee of high quality work. Therefore, those who are certified will be in a particularly advantageous position vis-a-vis those who only claim to be interpreters.

On the other hand, the court cannot be so selective that they would only certify the estimated 200 interpreters in the U.S. who can interpret in any situation. The courts clearly cannot compete for the top people who work for the UN, OAS, State Department, embassies and for glamorous conferences.

There are three basic options for developing tests; bearing in mind that there is no satisfactory precedence to follow - or institutional expertise to hire. Certification should, however, require a written test and an oral competency test for each language.

Option 1 = contract test development and administration to an educational institution. It would advise us who passed the test and we would inform the courts.

Option 2 = contract the written test development to a testing service like ETS to develop written tests and administer them. ETS could develop oral tests and then another group would administer them - and we could advise the court who passed.

Option 3 = The test could be developed through the AO, pulling together those experts in the field who are presently scattered among various institutions. We would develop the model test for Spanish, which is the biggest numerical problem. We would need to use OPM test centers and a staff of 3/4 to handle all the administrative details.

Most of those with whom I have talked have agreed that doing it ourselves would guarantee us a better product, sooner. If we contract out the test development, we are hiring nobody's institutional expertise and, therefore, whatever institution would need to seek the same kinds of people as we.

In developing a budget for tests, we are facing important unknowns. In California, 1100 interpreters signed up for the test and 733 took the test. Guestimates in New York City have ranged between 30 and several hundred who would want to be certified. Figures for the Southwest, Texas, and Florida are similarly vague.

As I mentioned, we have no figures for other languages but, despite the serious problems associated with finding a competent interpreter for exotic languages, the information we have would indicate dozens of cases per year nationally, as opposed to thousands of cases per year in Spanish.

For the speech and hearing impaired there is a precedent developed by the Registry of Interpreters for the Deaf. They have developed a Legal Skills Certificate. It is probable that we should adopt that certification as our own, although it is not universally accepted as valid by many state-level deaf organizations. However, when we have statistics on the number of deaf defendants who appear in Federal court, we will have a better idea of the cost/benefit ratio on developing a new test. Indications so far, however, suggest that we should go ahead with RID's certification.

For Spanish, I would project written testing dates for sometime in January or early February. . .and an oral testing program in progress by May. Scheduling will be a very difficult task for oral tests.

As we concurrently gather statistics on the need/practicality of certifying other languages, we can make appropriate decisions.

When our own interpreters are certified, they should be reclassified. Having audited them in the field, discussed the profession with leaders of professional societies, reviewed State Department classifications, etc., I believe that interpreters should be classified at the JSP-10-11-12 range, with supervisory interpreters eligible for JSP-13. It will require this kind of salary to attract interpreters of the caliber the courts need. Salaries at this level will also assure a continuing supply of good interpreters outside of the major population centers. For example, a graduate of Monterey Interpreting School would move to Fresno. A graduate of Santa Barbara would move to McAllen if necessary.

Other matter requiring attention are:

-- Develop a code of ethics for interpreters

-- Developed standardized administration of interpreters

-- Work with the FJC in developing training courses for interpreters.

-- Develop a system of periodic certification or recertification as necessary.

-- Develop standardized materials written in foreign languages for use in the magistrate's courts.

cc: Glenn Johnson,
Chief, Personnel Division

Attachment A

People Interviewed
Court Interpreter Act Implementation
as of October 23, 1979

Professional Interpreters
Nora Lejins - Chief, Interpreter Branch, Department of State

Alvaro Galvan - Interpreter OAS; President, American Society of Interpreters

Barbara Simon - Interpreter OAS; American Society of Interpreters

Lisa Valyiova - President, TAALS

Margurrite Borchardt - Vice President, American Society of Interpreters

Gustavo Hoffman - TAALS

Maria Elena Cardenas - President, Court Interpreters Association, New York

Richard Schoen - Court Interpreters Association, New York

Eli Weinstein - President, Court Interpreters Association, California

Eta Trabing - President, Court Interpreters Association, Texas

Jeanne Gomez - President, Court Interpreters Association, San Diego

Sofia Zahler - Developer of Los Angeles County Court Interpreter Test

Louis Marquez - Former court interpreter (Texas Probation Officer)

Eli Carasco - Los Angeles Superior Court Interpreter (one of better)

State Officials
Patricia McDonald - California State Personnel Board

Burdette Harris - Los Angeles County Personnel Department

Phillip Farrara - Director of Management and Placement - OCS - New York

James Hutchinson - Administrative Director of Courts - Texas

Educational Institution Personnel
Etilvia Arjona - Ex-Director, Department of Translation and Interpretation, Monterey Institute

Ad Hoc Free Lancers
Lia Sunshine - Owner of interpreting agency used exclusively by Los Angeles District Court

Alicia Haas - Official interpreter - Chicago

Ms. Matos - Manhattan

Ester O'Donnell - Sacramento

Judges
Chief Judge Garza - Texas (S)

Judge De Anda - Texas (S)

Judge Sessions - Texas (W)

Chief Judge Hill - California (C)

Chief Judge Schwartz - California (S)

Judge Marshall - Illinois (N)

Magistrate Schneider - California (C)

Magistrate Mix - California (E)

Magistrate McCue - California (S)

Magistrate Infante - California (S)

Magistrate Mallet - Texas (S)

Federal Public Defenders
James Hewitt - California (W)

Richard Walker - California (E)

U.S. Attorneys
Herman Sillas

Clerks of Court
William Whittaker - California (N)

James Grindstaff - California (E)

Edward Kritzman - California (C)

William Luddy - California (S)

William Weber - Director, Department of Translation and Interpretation, Monterey Institute

Roseann Duenas Gonzales - University of Arizona

Margarete Bowen - Georgetown University

Val Hampel - Director, Defense Language Institute, Monterey

Protase E. Woodford - ETS, Princeton

Steven A. Stupek - ETS, attorney, Princeton

Carlos Artiz - Ph.D., LEAA grantee directing study of court interpreting

Ms. Holly Mikkleson - Monterey Institute

Dr. Maria Elena Kolker - American University

Agency for Deaf
Karl Kirchner - Registry of Interpreter for the Deaf

Richard Dirst - Registry of Interpreter for the Deaf

Sy DuBow - National Center for Law for Deaf

Charles Watts - Division of Health, Department of Higher Education, New Jersey

William White - Author of California Interpreting for Deaf Law

Alma Berke - Deaf interpreter, Sacramento

Cheri Smith - DCARA, Oakland, California

Full-Time Salaried Court Interpreters - Audited
Rosa Sepulveda - Tucson

Roel Bustamente - San Antonio

Fred Kolwalski - Brownsville

Juana Garcia - Manhattan

Emil Rodriguez - Brooklyn

Teri Diaz - El Paso

Rachael Wingate - El Paso (Magistrate-Clerk)

Dorothy Smith - San Diego

Stuart Cunningham - Illinois (N)

Raymond Burghardt - New York (S)

Richard Weare - New York (E)

Charles Vagner - Texas (W)

January 31, 1980

Jon A. Leeth, Court Interpreters Program

Progress Report

William Foley, Director
Through F. GlennJohnson, Chief, Division of Personnel

Attached is a copy of the announcement for Part I (Written) Court Interpreters Certification Examination. The test is to be given through the testing facilities of the Office of Personnel Management (OPM), March 29, throughout the United States. We have no estimate of the number of applicants who will respond to this announcement.

The conference with the consultants to develop the oral test is presently proceeding in Brownsville, Texas. In addition to Judge Garza, Judge Gonzalez, and Judge Perez Jimenez who will advise and critique, the consultants are:

- Ms. Etilvia Arjona, an alumna of the Geneva School of Interpreting and ex-Director of the Department of Interpreting and Translation at Monterey School of International Studies.
- Mr. Alvaro Galvan, President of the American Society of Interpreters and chief interpreter at the Organization of American States.
- Dr. Roseann Gonzalez, professor of English as a Second Language, University of Arizona (Tucson) and developer of a test to determine a defendant's need for an interpreter.
- Dr. Maria Teresa Astiz, professor of Spanish an SUNY (Albany), former interpreter for the U.S. Department of State, and presently co-author of a study of court interpreting in municipal, state and Federal courts (LEAA).
- Dr. Eugene J. Briere, professor of linguistics at the University of Southern California and author of articles on court interpreting for Thai-speaking defendants.
- Mrs. Ely Weinstein, professional court interpreter in Los Angeles Superior Court and president of the California Court Interpreters Association.
- Dr. David Gerver, Ph.D., professor of linguistics, University of Stirling, Scotland. Dr. Gerver is a specialist in developing tests to determine aptitude for consecutive interpreting ability.
- Theodore Fagan, retired chief interpreter for the United Nations.

Hopefully, we will be able to administer the oral testsas planned in June.

cc: R. Glenn Johnson
D. Croyle
Daybook (CIP)
Subject File

JAL:djm

Appendix C

## INTERPRETED PROCEEDINGS IN FEDERAL COURTS

January - December 1984

| As Reported by District Courts | |
|---|---|
| Language | Number of Times Used |
| Spanish | 38,807 |
| Arabic | 326 |
| Haitian Creole | 344 |
| Italian | 368 |
| French | 266 |
| Chinese | 200 |
| Thai | 192 |
| Korean | 187 |
| Urdu | 148 |
| Navaho | 147 |
| Yoruba | 119 |
| Portuguese | 102 |
| Cantonese | 93 |
| Mandarin | 92 |
| German | 90 |
| Russian | 71 |
| Punjabi | 59 |
| Japanese | 55 |
| Farsi | 50 |
| Armenian | 49 |
| Chamorro | 45 |
| Vietnamese | 34 |
| Greek | 30 |
| Sign (For Deaf) | 29 |
| Czech | 27 |
| Hindi | 25 |
| Serbo Croatian | 23 |
| Polish | 20 |
| Hebrew | 17 |
| Tagalog | 17 |
| Apache | 16 |
| Tongan | 13 |
| Ibo | 12 |
| Filipino | 12 |
| Laotian | 12 |

| As Reported by District Courts | |
|---|---|
| Language | Number of Times Used |
| Hmong | 12 |
| Bengali | 11 |
| Taiwanese | 11 |
| Turkish | 11 |
| Hungarian | 9 |
| Swedish | 9 |
| Yugoslavian | 9 |
| Carolinian | 5 |
| Papago | 5 |
| Cambodian | 4 |
| Macedonian | 4 |
| Malai | 4 |
| Sicilian | 4 |
| Albanian | 3 |
| Nepali | 3 |
| Romanian | 3 |
| Tamil | 3 |
| Bangla | 2 |
| Dutch | 2 |
| Edo | 2 |
| Lakota | 2 |
| Lebanese | 2 |
| Ashish | 1 |
| Bulgarian | 1 |
| Tewa | 1 |
| Yavapi | 1 |

| As Reported by Bankruptcy Courts | |
|---|---|
| Spanish | 19 |
| Korean | 3 |
| Japanese | 1 |

Appendix D

# REPORTS OF THE PROCEEDINGS
# OF THE
# JUDICIAL CONFERENCE
# OF THE
# UNITED STATES

HELD IN
WASHINGTON, D.C.
March 11 and 12, 1982
and
September 22 and 23, 1982

# ANNUAL REPORT
# OF THE
# DIRECTOR OF THE ADMINISTRATIVE OFFICE
# OF THE
# UNITED STATES COURTS

1982

## COURT INTERPRETERS ACT

The Court Interpreters Act requires the Director of the Administrative Office to "prescribe, determine, and certify the qualifications of persons who may serve as qualified interpreters." 28 U.S.C. 1827(b). Since June 1979 the Administrative Office has been conducting certification examinations and the Director has been certifying persons to interpret in the Spanish language. In the last year the district courts have used interpreters for 26 separate languages. Next to Spanish, the highest use in 1981 was for Haitian Creole interpreters for about 200 appearances. The number of appearances for other languages did not exceed three or four during the year.

It was the view of the Committee that the Court Interpreters Act should be amended to give the Director the discretion to limit the languages for which he will establish certification programs. The only uniform way to certify a person's ability to interpret is by a skills' performance test. These tests are expensive to develop and for some exotic languages there may not be enough experts to develop them, nor sufficient candidates to make an examination worthwhile. To accomplish this change the Committee submitted proposed amendments to Sections 1827(b), (d), and (i) of Title 28, United States Code, which the Conference approved for transmission to the Congress.

**§ 1827. Interpreters in courts of the United States**

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired). ~~and in so doing~~, The Director shall ~~consider the education, training, and experience of those persons.~~* ~~The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters~~. The Director shall prescribe a schedule of fees for services rendered by interpreters.

(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

(d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)**, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (in-

*shall determine, based on the frequency of their use in federal courts, for which languages he wil establish certification procedures provided nevertheless that where the relative rarity of a particular language or tongue makes a certification program infeasible, the Director shall on request, assist any particular court in procuring a qualified interpreter.

**or in a bankruptcy court

cluding a defendant in a criminal case), or a witness who may present testimony in such action—

(1) speaks only or primarily a language other than the English language; or

(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

(4) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

(i) The term "presiding judicial officer" as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and ~~a referee in bankruptcy.~~ *(insert)

(j) The term "United States district court" as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

Added Pub.L. 95–539, § 2(a), Oct. 28, 1978, 92 Stat. 2040.

### § 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established

*bankruptcy judge

## Recommendation for Providing Adequate Court Interpreter Supervisory Services

The role of the supervisor varies slightly in each court according to the circumstances, but there are several facets common to each in that each supervisor:

1. reports to the Clerk of Court and is charged with maintaining smoothly working interpreter services at all times;
2. makes courtroom assignments of staff and free-lance interpreters, including rotating interpreters in multi-defendant, long trials to avoid "burning out" the interpreters;
3. screens each interpreter for suitability and in the case of non-certified interpreters administers preliminary testing and does ability reference checks;
4. monitors in-court proceedings to ascertain that professional level services are provided at all times;
5. assists free-lance interpreters in their billings;
6. plans assignments in such a way that free-lance staff are fully occupied, i.e., schedules translations and/or certification of wire tap transcripts introduced into evidence so as to complement short appearances in court;
7. advises the court on the quality and quantity of interpreting equipment needed for multi-defendant trials and to conserve the interpreter's voice and avoid delays in proceedings;
8. compiles statistics on interpreters use for the required annual report to the Congress regarding the effectiveness of the Court Interpreters Act;
9. recruits interpreters of exotic languages and maintains a roster.

In addition to these tasks common to each system, supervisors may develop training programs to acquaint free-lance interpreters with federal court procedures, terminology, ethics, and the federal criminal justice system.

Some provide a comprehensive, coordinated interpreting service for the U.S. Attorney's Office, as well as pre-trial and probation services. This results in a systematic, more efficient utilization of interpreters. Some have a type of tracking system so that scheduling, including cancellations, are not crisis situations.

Appendix F

## FREE LANCE INTERPRETER FEES PAID UNDER THE COURT INTERPRETER ACT

### FISCAL YEAR 1985

OCTOBER 1984 - September 1985

| | |
|---|---|
| Alabama (N)..... | $ 1,990 |
| Alabama (M)..... | ... |
| Alabama (S)..... | 12,344 |
| Alaska.......... | 628 |
| Arizona......... | 29,730 |
| Arkansas (E).... | 85 |
| Arkansas (W).... | 45 |
| California (N).. | 46,747 |
| California (E).. | 37,393 |
| California (C).. | 245,033 |
| California (S).. | 123,270 |
| Colorado........ | 3,799 |
| Connecticut..... | 17,679 |
| Delaware........ | ... |
| D. C............ | 12,982 |
| Florida (N)..... | 2,940 |
| Florida (M)..... | 20,522 |
| Florida (S)..... | 220,988 |
| Georgia (N)..... | 38,999 |
| Georgia (M)..... | 464 |
| Georgia (S)..... | 2,602 |
| Hawaii.......... | 7,725 |
| Idaho........... | 3,615 |
| Illinois (N).... | 16,380 |
| Illinois (C).... | 1,217 |
| Illinois (S).... | 316 |
| Indiana (N)..... | 8,793 |
| Indiana (S)..... | 90 |
| Iowa (N)........ | 346 |
| Iowa (S)........ | 320 |
| Kansas.......... | 2,335 |
| Kentucky (E).... | 4,645 |
| Kentucky (W).... | 956 |
| Louisiana (E)... | 16,055 |
| Louisiana (M)... | ... |
| Louisiana (W)... | 3,065 |
| Maine........... | 8,210 |
| Maryland........ | 36,763 |
| Massachusetts... | 21,295 |
| Michigan (E).... | 2,105 |
| Michigan (W).... | 225 |
| Minnesota....... | 8,110 |
| Mississippi (N). | ... |
| Mississippi (S). | 1,020 |
| Missouri (E).... | 4,743 |
| Missouri (W).... | 660 |
| Montana......... | 45 |
| Nebraska........ | $ 2,009 |
| Nevada.......... | 825 |
| New Hampshire... | 2,500 |
| New Jersey...... | 42,353 |
| New Mexico...... | 7,906 |
| New York (N).... | 33,174 |
| New York (E).... | 137,773 |
| New York (S).... | 151,216 |
| New York (W).... | 4,040 |
| N. Carolina (E). | 4,402 |
| N. Carolina (M). | 7,147 |
| N. Carolina (W). | 1,087 |
| North Dakota.... | ... |
| Ohio (N)........ | 1,681 |
| Ohio (S)........ | 14,178 |
| Oklahoma (N).... | 45 |
| Oklahoma (E).... | ... |
| Oklahoma (W).... | 3,855 |
| Oregon.......... | 3,528 |
| Pennsylvania (E) | 2,155 |
| Pennsylvania (M) | 2,246 |
| Pennsylvania (W) | 90 |
| Puerto Rico..... | 10,597 |
| Rhode Island.... | 6,973 |
| South Carolina.. | 7,331 |
| South Dakota.... | ... |
| Tennessee (E)... | 660 |
| Tennessee (M)... | ... |
| Tennessee (W)... | 1,881 |
| Texas (N)....... | 18,210 |
| Texas (E)....... | 883 |
| Texas (S)....... | 76,840 |
| Texas (W)....... | 27,471 |
| Utah............ | 1,356 |
| Vermont......... | 2,105 |
| Virginia (E).... | 916 |
| Virginia (W).... | ... |
| Washington (E).. | 7,723 |
| Washington (W).. | 4,593 |
| W. Virginia (N). | 407 |
| W. Virginia (S). | 1,105 |
| Wisconsin (E)... | 4,530 |
| Wisconsin (W)... | 270 |
| Wyoming......... | 350 |
| Virgin Islands.. | 1,582 |
| | $1,565,267 |

## RESPONSES OF JUDGE THOMAS GIBBS GEE TO WRITTEN QUESTIONS FROM SENATOR HATCH

**Q1. Based on your committee work with the Judicial Conference, what do you see as the future of court interpretation services in our federal courts? Are there any real problems on the horizon?**

A. To discuss the future, it is necessary briefly to review the past.

Before 1978, when the present Court Interpreters Act was passed, the interpreting services in any language provided for court proceedings bordered on the abysmal. Perhaps 8 percent of the proceedings needing language services were interpreted by minimally qualified interpreters. That is to say that of roughly 25,000 proceedings, approximately 2,000 were handled by qualified interpreters. Today, we know that of approximately 40,000 proceedings, about 34,000 have had the advantage of certified interpretation. This is a dramatic achievement. Many judges and court administrators who in 1980/81 were reluctant to use the first certified interpreters now actively recruit them. Even though if they stuck to the "letter of the law," they would not be compeled to do so because judges may use "otherwise qualified" interpreters if no certified interpreter is "available." Staff interpreters have increased in numbers from 14 to 33, all of whom are certified except one temporary appointment in Texas Southern.

The major reason that nearly 6,000 proceedings continue to be held without certified interpreters in attendance is that there are several geographic areas of the country in which there are not enough certified Spanish/English interpreters to serve the courts, and the number of appearances have increased by 50 percent over the years. For example, in Texas Southern one of the divisional offices used a non-certified interpreter in 2,264 proceedings. These were mainly arraignments for undocumented immigrants. Actual trials were covered by the one certified interpreter resident in the area. The Middle District of Florida held 329 Spanish/English proceedings; there was no certified interpreter resident within the district; in Arizona and California Southern there were 380 and 300 proceedings respectively not serviced by a certified interpreter because none was available. Nevertheless, the certified court interpreter supervisors in these courts carefully screened the non-certified interpreters and monitored their work sufficiently to assure the court that there were no problems.

It is logical to expect that within the next two years the use of certified interpreters should be in the range of 95 percent of all cases heard requiring interpreting services. This assumption is predicated on identifying additional certified interpreters in our next round of testing scheduled to begin in early 1987.

To improve these services, we have asked the Congress for authority to hire six more staff Spanish/English interpreters, which would allow the courts to substitute closely supervised staff for freelance--either certified or uncertified.

In non-Spanish cases, before 1978, courts rarely sought help outside their local jurisdictions. Today, it is typical, although not invariable, that the courts contact the Department of State for names and addresses of the best qualified conference interpreters. Courts have the authority to, and in the main do, look for the best interpreters available from the international organizations--and pay top prices to obtain their services. In many instances the interpreters for non-Spanish proceedings are receiving conference level fees or more per day. For example, in the case of U.S. v. Badalamenti presently being heard in the Southern District of New York before Judge Pierre Laval, four conference level interpreters are each being paid $250 per day, plus expenses. That fee is higher than attorneys working for the federal public defender earn for six trial hours and higher than the $175 per day paid to certified interpreters. The court is even paying the interpreters for five days a week, although the trial is only held four days per week.

A major problem on the horizon is the increased and unrelenting influx of undocumented aliens entering the country and the seemingly ever increasing smuggling of narcotics. When interpreters are required in connection with proceedings arising from these activities, in the main they are Spanish/English interpreters. Without more staff and further certification, the courts will not be able to handle a much larger interpreting workload.

Additional minor problems will probably persist. It is an unfortunate truth that in each of the 61 languages used in federal courts, no matter how extensive and elaborate the effort, and no matter how many dollars underscore our concern, there simply will never exist highly qualified interpreters. If, after testing 7,000 candidates, the court system could find only 292 certified Spanish/English interpreters at a minimal level of competency, how many equally qualified persons are there in Japanese, Korean, Apache, Hindi, Urdu, and Polish? If the Congress is willing to appropriate the money, that question can be answered. It will be expensive to find out.

**Q2. Do you see any alternatives to the certification proposals in this bill to ensure that only competent interpreters are used in the federal courts? If so, what are the other options?**

A. The present bill has many merits in requiring the judicial officer to choose "otherwise competent interpreters" when no certified interpreter is available. We believe that the courts are being responsible in their selection of interpreters. After all, the interpreter is subject to challenge and removal if there are communication problems--and should the court not be able to satisfy the parties, an appeal can be taken based on faulty interpretation services. While that has not happened to date in a federal court for interpreters in any language, the appeal process is a built-in safeguard--an incentive to the court to select the best available.

We know for a fact that some courts which require non-Spanish interpreting services share those lists of competent interpreters which they develop with other courts around the country. More sharing can and will occur in the future, but there simply are not enough qualified interpreters in each of the 61 languages used to go around.

Primarily, however, there are sources of otherwise competent interpreters through the Department of State and international organizations in some languages--not in all.

Q3. **How important is it for a witness at a grand jury to have the services of a certified interpreter?**

A. It is of extreme importance that a certified or otherwise competent interpreter assist the grand jury. I believe that few persons in the judicial branch contest that proposition.

I noted, however, that none of those giving testimony on February 25 represented the Department of Justice, although much was placed in the record regarding shoddy practices in choosing interpreters on the parts of U.S. attorneys around the country. Grand jury proceedings are not open to the public--judges do not preside over them--and court supporting personnel are not involved in them. We would expect, should the law be modified to include the use of certified interpreters in grand jury proceedings, that the Department of Justice would continue to be responsible for servicing and paying for those interpreter services, just as they are responsible for securing and paying for interpreters for government witnesses in district court proceedings.

But the real need for interpreting services at the federal level goes beyond the court and grand jury proceedings. There are other interpreting services provided by the executive branch which are judicial in nature that should require the use of certified interpreters. Benefit hearings before social security administrative law judges and deportation hearings before the immigration courts surely represent a major use of interpreters without any guarantee of quality. However, current laws do not require that interpreter competence be addressed in any of those proceedings. In many of these executive agency proceedings, the total life of the petitioner or defendant and family is affected by the outcome. The issue of due process is just as vital for deportation or denial of "entitlement" income before executive courts as it is in federal district courts, because any real appellate review of these procedures in district courts is often too expensive for these petitioners to be practical.

Q4. **Judge Gee, according to the Administrative Office's own figures over the past several years, interpreters in languages other than Spanish were used in the district courts on a few hundred occasions. What objective methods has the Administrative Office implemented to assure that the defendants in these proceedings have been provided with qualified interpreters?**

A. Other than testing, there is no objective manner to determine an interpreter's capability. However, there are additional sources of otherwise competent interpreters, as already described in previous questions. Specifically, the AO has written in the Information and Management Bulletin, Volume 64, June 1983:

> **If the court is unable to find interpreters of languages other than Spanish/English at the non-certified rates contained in the Director's memorandum of December 28, 1982, courts may negotiate rates commensurate with prevailing professional fees, which could vary depending on the scarcity of any particular language. For proceedings of a lengthy or difficult nature, such as trials, however, the court should contact the Languages Service Division of the Department of State to determine if there are practiced interpreters on State's conference interpreter roster in the area before turning to local universities or commerical translating firms...** (page 4)

In major metropolitan areas where the majority of interpreters in languages other than Spanish were used, California Central, New York Southern, New York Eastern, Florida Southern, and Arizona, there are court interpreter supervisory positions authorized by the AO. The supervisor's job description specifically requires supervisors to monitor the work of all interpreters...and to orient freelance interpreters to the peculiarities of federal court work.

The Congress must realize that in our basically monolingual society, for at least some of the languages interpreted in Federal courts--such as Serbo-Croatian, Tagalog, Apache, Lakota and others--there might not be enough, or indeed, any persons qualified to interpret or even monitor the interpretation. In dealing with these rare-incidence languages, we must simply do the best we can within the constraint of what is economically feasible.

## RESPONSES OF JUDGE THOMAS GIBBS GEE TO WRITTEN QUESTIONS FROM SENATOR THURMOND

Q1. **What is a realistic estimate of the costs associated with the development of an improved court interpreters program, as described and recommended by you today?**

A. The only portion of S.1853 endorsed by the Judicial Conference and recommended by us is that provision which would extend the use of "certified" and "otherwise competent" interpreters to grand jury proceedings. Because the interpreters being used presently are being compensated by the Department of Justice for grand jury proceedings, the courts cannot provide competent estimates of the cost of implementation of that recommendation.

However, the total costs of the bill if fully enacted as introduced would be very great.

The cost of § 1829, which creates a National Court Interpreters Special Task Force, would aggregate about $700,000 in salaries and expenses. The section outlines nine discrete tasks, each of which will require time to define, to have expert consultants conduct research and to deliberate on recommendations. Some of the questions fall into the same category as that of "how many angels can dance on the head of a pin." The creation of the Task Force is also a license for academicians and others to create open-ended research projects--a full employment bill for interpreter-related research--most of which is of dubious value in relation to day-to-day trial conduct in federal courts. There are many other priorities for any funds available to the federal government to improve conflict resolution in the district courts.

We must emphasize that the Task Force proposed may act completely independently and autonomously to "retain such full-time staff and part-time consultants as may be necessary to carry out the responsibilities of the Task Force." (§ 1824(4)) This constitutes a blank check on the appropriations of the federal judiciary.

Cost for developing tests in eight languages additional to Spanish--or 10 if Senator Simon's request to include Polish and Russian is accepted--would average a minimum of $120,000 per test. Advocates of this proposal would have the Congress believe that these cost projections are high--and say that the model already exists--and that the costs of new tests would be inconsequential. If the Judicial Conference believed that there were no exorbitant costs required, it would have no objection to this provision of the bill. But there are historical data on costs of test development. Costs for test development are divided into several categories including:

a. salaries of professional AO staff or a contractor to direct the project (plus overhead if a contractor);

b. secretarial and support costs;

c. space and facilities;

d. consultants for test writing, including fees, travel, and per diem;

e. pilot testing costs;

f. scoring and test analysis of pilot; and

g. development of test brochures.

The salaries would be set at $260 per day because the interpreters would be paid on that level. In most of the languages there are at best perhaps a handful of bilingual persons competent to develop the tests--and administer them. Therefore, minimum total costs for test development for the 10 languages would be over $1,000,000.

Because tests cannot be given a second time without modification, new monies would be required for each cycle. In the ideal situation, it should cost only about one-third to one-half of the initial cost for test development for the first repeat cycle. The second repeat cycle would be full cost again.

Test administration costs are more difficult to predict because the total number of candidates interested in certification are unknown. Cost categories for test administration are the following:

a. AO staff directors or contractors, plus overhead;

b. test advertising;

c. test printing;

d. candidate registration costs;

e. space and personnel associated with test proctoring;

f. scoring and final test analysis of written portion;

g. rater training (salaries, travel and per diem);

h. administration of oral tests--rater teams (salaries, travel and per diem);

i. appeal panels (salaries, travel and per diem); and

j. equipment costs.

Based on historical data, it is reasonable to budget a minimum of $1,000,000 for test administration costs for 8 to 10 languages. These costs are recurrent with every test cycle. However, we would predict that if certification implies a warranty of competence to the court and parties, only a handful of interpreters would be certified in any of the languages listed, and perhaps no interpreters would be certified in some languages. Even after such meager results, some of those interpreters so carefully and expensively identified would not be available when needed throughout the United States distict court system, just as some Spanish/English interpreters are never available when the courts need them. We can scarcely justify an expensive certification process just because some interpreters want the "status" conferred by the Administrative Office test, even if there is no other valid credential conferring process for interpreters in the United States.

In addition, I hasten to point out that I continue to find it puzzling that the languages mandated for certification in the bill are not those most frequently used in the federal courts.

Other costs of the proposed bill relate to the requirement to monitor interpreters on the job. This provision would require more staff for the Administrative Office--a minimum of three to reasonably monitor the more than 38,000 proceedings using Spanish/English interpreters annually. There would also be a need for other language experts hired on an individual basis. Salaries, consulting fees and travel and per diem fees would cost $250,000 annually.

Therefore, total costs related to the Task Force, test development, test administration, and supervision would be more than $3,000,000 during initial implementation. Successive years' costs would depend on the frequency of test administration.

Q2. **While it appears that there is a need for competent court interpretation in numerous foreign languages in our federal courts, the expense for implementing and maintaining such a program to train competent interpreters is staggering. What suggestions would you make which offer a solution for this concern?**

A. Interpreter training programs costs are indeed staggering. A one-year program at Georgetown University per student costs $9,300, exclusive of meals or housing; and at the Monterrey Institute, $6,850. It does not seem appropriate for the federal government to underwrite training costs for interpreters in federal courts when there are alternatives available to resolve some language needs so that equity is achieved. After all, other court functionaries, such as lawyers and court reporters, finance their own training.

Supervisory interpreters can and do monitor interpreting in various languages. Supervisory interpreters and court administrators do work through the U.S. Department of State, international organizations and professional associations such as the American Association of Language Specialists and the American Society of Interpreters to secure the best possible interpreting services. However, there were 61 languages used in federal courts in our latest statistical reporting year. In many of these languages, there are few persons both totally bilingual at the level of federal court discourse and competent interpreters. No amount of training will produce competent interpreters if a very rare natural aptitude is not present to begin with.

Courts, therefore, can adapt, i.e., lower the level of discourse, slow down proceedings, and take the time necessary to ensure essential comprehension. When such languages as Arabic or Urdu require interpreting, judges and attorneys must be sensitive to language issues and not insist on "business as usual." Just as with certified interpreters, when languages that are difficult to interpret are used, the court can use target language specialists to check the work of the interpreter--and can tape record the interpretation in order to check for accuracy.

Senator HATCH. Thank you, Judge Gee. We appreciated your excellent prepared statement. It is extensive; there is a lot of research and a lot of effort has been put into it, and it helps us a great deal.

Judge GEE. Thank you, Senator.

Senator HATCH. So we are very grateful for the kind of effort you have put forth.

Let us turn to you, Judge Duffy, and take your testimony. Then we will have time for a few questions.

## STATEMENT OF JUDGE KEVIN THOMAS DUFFY

Judge DUFFY. Senator Hatch, Senator Thurmond, Senator Simon, it is a real pleasure to be here. I am not accompanied by anyone, I guess, except the spirit of the district judges, and some of my friends who are district judges are quite large, and their spirit is, also.

I have also filed prepared remarks. Let me just comment on, first of all, grand juries. In the Southern District of New York, we had a case some years ago brought by two interpreters suing to have the certification program set aside. That case was very interesting. These people were not certified. Moreover they have not been certified since that time, although they have repeatedly taken the tests. These people are the interpreters generally used by the U.S. attorney's office in the Southern District of New York when a case is being presented to a grand jury. What happens in a grand jury? Most of the time, if you have something mistranslated, you end up with a putative defendant either making an admission or a false exculpatory statement or grist for cross examination. I submit that if the grand jury is really the bulwark of protection for the little man, then that is a place where no one, absolutely no one, could disagree that we should have the best certified interpreters.

We arrive now at the fact that we presently only have Spanish interpreters being certified by the Administrative Office. I have been trying a long case for the last 4½ months. In fact, the jury has gotten this morning off. The case is called *United States* v. *Costellano*. I am very pleased because I sit like the middle of a sandwich. On top of me, in the other large courtroom, is what is called the pizza case, where Judge Leval is trying a case with 16 people who speak only Italian. He started the same day I did 4½ months ago; he has had one English-speaking witness on the stand. We do not have Italian certified interpreters. Judge Leval has had to fight continuously about the interpretation and the ability of these people to interpret. Now, the statistics provided by the Administrative Office do not tell you that Judge Leval has had to waste 6 to 8 percent of his time, according to the court reporters, on just having hearings as to the interpretation of one word, or two words, or an answer, or a question.

How, then, can we suggest that by ignoring the other languages, we are going to be saving money? If we save money, are we saving money at the expense of the accused? Are we saving money at the cost, and a heavy cost, of judicial time?

Downstairs under me is John Sprizzo. He was trying a case which involved 11 Arabic-speaking people. Now, if you are expecting to have help for these Arabs from their attorneys, forget it. They were all CJA attorneys and it just so happened that every one of them was Jewish. I do not think that they were speaking Arabic to the people involved. John Sprizzo tried the case and, for all he knew, the Arabic interpreters could have been reciting the Rubiyat to the people involved. He had no conception of what the interpreters were saying and John is a very, very intelligent person.

The suggestion has been made that we, the members of the judiciary, should go out somehow and find qualified interpreters. Well, how could we do it? Let us take a look in New York City. In New York City we have the U.N. and we have the U.N. interpreters. Because we have the U.N. interpreters, I am sure that you would think that we could call in the U.N. interpreters to come in and find out whether the court interpreters are, in fact, translating properly. Well, the U.N. interpreters, first of all, do not want to be court interpreters, nor do they want to have anything to do with court interpreting because the skills are totally different. OK, how about the academicians, the people from the colleges, the people who teach? We do not have, to the best of my knowledge, any kind of a professor coming by to help us out.

What happens? Let me give you a real-life situation, a case that I tried, a civil case. It was in Farsi, which is the language of Persia. A question was asked. The interpreter went on for about 45 seconds, which is a long time, apparently interpreting the question. A response came out, I would guess, for about 30 seconds. The interpreter turned to the witness, went on for about 45 seconds; a response came out for another 45 seconds. The interpreter then turned around and said, "The answer is no." At that point, needless to say, I put in the record what had gone on. But to tell you the honest to God's truth, with the absence of a certified interpreter, I had no idea of what was going on there, nor was I in a position to find out what was going on. How, then, am I supposed to determine such facts as state of mind when I do not even know what the people are talking about?

I submit that the original act did not restrict its scope, nor the protections of the Constitution, to only the Spanish- and English-speaking segments of our population. Certification of other interpreters would go a long way to taking the problem off the backs of the district courts.

A suggestion has been made that cost is a big factor, and it costs $120,000 to figure out what the test should be, and so on and so forth. I do not know where that money is going. I wonder if the State Department spends $120,000 for their interpreters on a yearly basis, for each language. I do not know.

All I can tell you is that from the point of view of a district judge, it would be an awful lot easier for us to do what I think you want us to do, and that is justice, by permitting us: (a) to have certified interpreters in the grand jury and; (b) to have certification, or at least guidelines, or something from the Administrative Office—something we have not had. We have up to this point a great lack of any of this even in the reports required under the present statute, without amendment. There are supposed to be reports as to the effectiveness of the interpreters. To the best of my knowledge and belief, there are none.

And yet, there we are on a daily basis trying to do justice and we are not sure we can. We come to you, the Members of the Senate, to give us the tools to do our job.

Thank you.

[The prepared statement and responses to written questions follow:]

# PREPARED STATEMENT OF JUDGE KEVIN THOMAS DUFFY

District judges are called upon, almost on a daily basis, to protect the constitutional rights of people living in this country. It is a job which gives us great pride and pleasure. And it is you, Senators and the Members of the House of Representatives, who provide us with the means whereby we can fulfill our duties. I personally believe that the passage of the Amendments to the Court Interpreters Act now under consideration will give us one more needed tool in making sure that justice is done.

The Bible tells us that "the Lord said ... 'let us then go down and there confuse their language so that one will not understand what another says.' Thus the Lord scattered them from there all over the earth and they stopped building the city. That is why it is called Babel ...." (Genesis 11:6-9). This happened as punishment for their sins of pride against God. Those sins of our common ancestors, however, cannot be permitted to work against the non-English speaking or hearing impaired person coming into our courts seeking justice.

## I. THE NEED FOR QUALIFIED INTERPRETERS

There is an excellent summary of the reasons underlying the need for qualified interpreters in the introductory portion of the proposed legislation. It reads as follows:

> (2) the failure to provide competent interpretation services to such individuals in federal judicial proceedings could, under certain circumstances, constitute a denial of rights secured by the Fifth and Sixth Amendments to the Constitution of the United States because such individuals may--

> (a) be deprived of life, liberty, or property without due process of law;
>
> (b) be unable to confront adverse witnesses due to a lack of comprehension;
>
> (c) be deprived of the ability to effectively consult with counsel; and
>
> (d) fail to comprehend the rulings and pronouncements of the court or of documentary evidence introduced in such proceedings.

This is an incisive distillation of the various decisions in the courts of this nation which have held that there should be a competent interpreter for the non-English speaking.

In view of the fact that our nation is a true melting pot with a far from homogenous population it is somewhat surprising that there were no reported cases about this subject until Terry v. State, 21 Ala. App. 100, 105 So. 386 (1925). Because I am a trial judge I would like to think that this case came so late in our history solely because of the sensitivity of trial judges generally to the rights of the accused. Whatever the reason, however, the real watershed decision in the federal courts was the case of United States Ex Rel. Negron v. New York, 434 F.2d 386 (2d Cir. 1970).

In that case the Court of Appeals for the Second Circuit affirmed the grant of a writ of habeas corpus to a state court prisoner who had been convicted of murder in the second degree and sentenced to from 20 years to life in prison. The petitioner Negron spoke no English and his court appointed attorney spoke no Spanish. At Negron's four-day trial there was a total of 14 witnesses. Two of the witnesses were Spanish speaking and an interpreter was provided to translate the testimony of those witnesses and to translate Negron's testimony to the court, the jury, and the attorneys.

The interpreter, apparently out of the goodness of her heart, also gave Negron a brief summary (not over 20 minutes) on two occassions as to what had gone on during the time that the interpreter was there. The Second Circuit specifically approved the district court finding that these brief summaries during court recesses were not sufficient to enable Negron to "understand the precise nature of the testimony against him during that period of the trial's progress when the state chose to bring it forth." 434 F.2d at 389-90. The Court held "Negron's trial lacked the basic and fundamental fairness required of the due process clause of the Fourteenth Amendment." Id. at 389. The Court reasoned that "as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom, the state by its criminal processes chose to put in jeopardy." Id. 390.

Like Negron, many of the decisions since that time seem a bit unclear as to exactly which one of the four categories listed in Section 2 of the proposed Act, their holding is based upon. Thus, the fairness or due process point seems central to Ferrell v. Estelle, 568 F.2d 1128 (5th Cir. 1978), opinion withdrawn, 573 F.2d 867 (5th Cir. 1978) and United States v. Carrion, 488 F.2d 12 (1st Cir. 1973), cert. denied, 416 U.S. 907 (1974). Lack of confrontation seems central to the opinions in Arizona v. Natividad, 111 Ariz. 191, 526 P.2d 730 (1974) and Garcia v. Texas 151 Tex. Cr. R. 593, 210 S.W.2d 574 (1948). Inability to consult with counsel seems to be basic for the decisions in Wilson v.

United States, 391 F.2d 460 (D.C. Cir. 1968) and Dusky v. United States, 362 U.S. 402 (1960). Failure of comprehension of the testimony, rulings, and pronouncements of the court was the central reason for the decision of Wisconsin v. Neave, 344 N.W.2d 182 (Sup. Ct. Wisc. 1984).

## II. THE PRESENT STATE OF COMPETENT INTERPRETATION IN THE COURTS

When news was published that Congress passed the Court Interpreters Act of 1978, many of the judges thought that our problems would in great part disappear. Unfortunately, we were mistaken.

Apparently, through some inadvertance the present Court Interpreters Act calls for consecutive translations of the proceedings. If this section were followed literally all proceedings involving interpreters would be twice as long. The present Act gives us some discretion and in fact the translation of the greater portion of the trials involving interpreters are done in the simultaneous mode. This is a flaw in the Act itself which should be corrected.

Similarly the authors of the 1978 Act perhaps overlooked the need for competent interpreters before a Grand Jury. We all are aware that Grand Juries are a bulwark of protection for the accused. See United States v. Mandujano, 425 U.S. 564, 571 (1976). How can a potential defendant, however, tell his story to those who are supposed to protect him when he is non-English speaking or hearing impaired and no competent interpreter is present. The system now in vogue, at least in the Southern District of New York, is that the prosecutor supplies an interpreter for the Grand Jury. This has three obvious drawbacks: (1) the interpreter provided is an employee of the prosecutor who may have a bias for the prosecution and against the defendant; (2) the interpreter is non-certified and generally unable to pass a certification test, and (3) whatever is recorded by the Grand Jury stenographer coming from the mouth of the prosecution's employee becomes either an admission by the putative defendant, a false exculpatory statement, or grist for cross-examination of the defendant. The interpretation of a foreign language we all know can be a matter of nuances. The Christian Science Monitor in a story on court interpreting pointed this up:

> 'Hombre, no tengo diez kilos!'
>
> Those words, heard on tape in a New York courtroom, convicted a Cuban man on drug charges. But he happened to be innocent.
>
> The man had been asked for a loan and replied, 'Man, I don't even have 10 cents!' The courtroom interpreter translated the sentence as 'Man, I don't even have ten kilos!' -- a measurement for drugs, and a sizable one.
>
> Fortunately, a more experienced interpreter familiar with the double meaning of the word later heard the testimony and helped overturn the conviction.

Christian Science Monitor, December 7, 1981.

I submit that permitting the present system concerning interpretations in Grand Juries smacks of real unfairness, that type of unfairness which may really be violative of the Fifth Amendment to the Constitution.

Another difficulty with the present law stems in great measure from the implementation of the law by the

Administrative Office of the United States Courts. We presently have certified interpreters only in Spanish. While I recognize that many of our citizens have Spanish as the language which they learned at their mothers' knee; there is no indication in the present Interpreters Act that the protections of the Constitution are to be limited to the English and Spanish speaking segments of our population. The Administrative Office, however, has done nothing to certify interpreters in any other language. Of course, the answer of the Administrative Office is that there is no real need for court interpreters in any other language. The Administrative Office will show you statistics to that effect. But I submit that statistics do not tell the full story. Many languages other than Spanish are used on a daily basis in the district courts in New York.

Judge John Sprizzo in the Southern District of New York just finished a four month criminal trial where eleven of the defendants had Arabic as a mother tongue. United States v. Murad Nersesian, et al., No. 84 Cr. 1034 (JES).

Judge Pierre Leval in the same court has a case which started in September 1985 and is presently expected to finish in September 1986 where of the 23 defendants, 16 speak Italian or the Sicilian dialect. United States v. Badalamente, et al., No. 84 Cr. 236 (PNL). In Judge Leval's trial there has been an enormous expenditure of time taken up by arguments and hearings over the competence of the interpreters and the interpretation of certain words. This expenditure of time could have been avoided by certification of the interpreter. Needless to say this expenditure of time is not reflected by the statistics generated by the Administrative Office.

It should be pointed out that under the present administration of the law, reports are required to be made. What reports I have been able to find are purely statistical in nature and while of some interest I find them to be of no help. Unfortunately, while the present statute requires that the reports cover not only the statistics but also the "effectiveness" of interpreters, it seems that this is another statutory mandate that those presently responsible for administering the Act, are either unable or unwilling to fulfill.

## III. THE PROPOSED AMENDMENTS

The first and most notable change in the proposed amendments is the provision that the interpretation be in the simultaneous mode. Ordinarily this is the preferred method of translation in court. There are times when the consecutive mode is better because of unusual circumstances. Needless to say the summary mode is not desireable. The proposed legislation leaves the court with sufficient discretion to use the mode most suitable in each case.

The second important advance is to require the certification of interpreters in the more common languages. I am aware that interpretation of these languages in court proceedings is not as common as Spanish -- but the statistics generated by the Administrative Office are not the only touchstone of need.

Consider the plight of the district judge who is trying a criminal case, perhaps even a multi-defendant criminal case, where the accused are unable to speak English and the only interpreter available is non-certified. What is the judge to do? Is he to somehow test the interpreter? Is he to pass on the interpreter's qualifications? If so, how?

In the City of New York, we have any number of United Nation interpreters. These people rarely come to be court interpreters because the skills for each job are different. Perhaps they could tell us if our non-certified court interpreter was doing a passable job. But what happens if the judge is sitting on a trial in a district far from the United Nations' interpreters?

Similarly, in the City of New York we have a large number of universities and colleges where foreign languages are taught. The teachers of foreign languages in New York rarely even try to be court interpreters. There really seems to be no correlation between teaching a foreign language in academia and the real world of court interpreting.

It follows that, except for a few truly bi-lingual judges, the use of a non-certified court interpreter by a trial court is a chancy thing at best. In the years since the passage of the original Court Interpreters Act the Administrative Office has done nothing whatsoever to assist the district courts in this area.

The passage of the proposed amendments will force the certification of common languages and take this burden off our backs.

The proposed legislation also sets up a task force of professionals involved with court interpreting on a day to day basis. This task force is to be given the job of setting up appropriate criteria for the certification of court interpreters. If such criteria had been set down for choosing interpreters then the judges and everyone else would see exactly the qualities needed for this demanding job.

I must say that I hold no brief for the exact make-up of the task force. I do not care who makes up the membership, but I do believe that the needed job cannot be relegated to bureaucrats or academedicians with little practical experience in the field.

## IV. THE EFFECT OF THE PROPOSED AMENDMENTS

As a district judge I believe that it can only benefit the justice system to know that the court interpreters are competent. The proposed amendments give the trial judge the proper discretion, within bounds, to make the system work.

I expect that there may be some question as to the cost of these amendments. I have been told that the Administrative Office costs out the preparation and administration of the Spanish certification exam at $250,000. I cannot understand that. There must be a better way of doing it. Does the State Department expend that much every year to select their interpreters? In any event it should be noted that the cost of certification is a one-time cost. If the screening process is any good there is no need for a person to go through it more than once.

Whatever the cost, however, the benefit to the justice system is worth it. With proper interpretation justice will become more understandable and more available to all. Thus, we may better fulfill the Bible admonition, "Ye shall have one manner of law, as well for the stranger as for one of your country." Leviticus 24:22.

## RESPONSES OF JUDGE THOMAS DUFFY TO WRITTEN QUESTIONS FROM SENATOR IHURMOND

1. Q. What is a realistic estimate of the costs associated with the development of an improved court interpreters program, as described and recommended by you today?

A. The Administrative Office estimates that it will cost $120,000 to develop an interpreters' certification exam in each of the proposed languages. This estimate, however, is inherently suspect since it comes from those who are opposed to the amendments and who have to date avoided the implication of obvious cost reductions.

I submit that the estimate given by the Administrative Office is fallacious for the following reasons: (1) the Administrative Office estimate is based upon devising an interpreters' examination for each language, but the interpreters' examination is already in existence. All that would be required is to translate the items now in Spanish back into English and then into the language to be tested. In this manner the written test for the new language could be prepared in those languages in a few days. (2) One of the best cost saving approaches is to charge the candidates for taking the test. This approach was not used by the Administrative Office until 1985 when a minimal charge of $25 was imposed for the Spanish Certification examination. I am told that the registry for the Interpreters for the Deaf presently charges candidates one-half the cost for its registration examination. (3) The Adminsitrative Office presently spends about $100,000 sending six teams of testers for an entire month traveling around the country testing candidates in the Spanish Certification Exam. If the Certification Exam were given in Washington, D.C. and perhaps one place on the West Coast these costs would be vastly reduced.

I am unable to come up with a realistic estimate cost such as you request, but I submit that it is substantially less than the number suggested by the opponents to these amendments.

2. Q. While it appears that there is a need for competent court interpretation in numerous foreign languages in our federal courts, the expense for implementing and maintaining such a program to train competent interpreters is staggering. What suggestions would you make which offer a solution for this concern?

A. First, I am not recommending the implementation of a program designed to train interpreters in the various languages they will be translating. I do suggest, however, that some training in court work should be provided and required of interpreters prior to being certified. Such starting programs as suggested by Judge Gee could be done through the Department of Labor or perhaps fashioned after the Foreign Service Institute of the Department of State. Second, the cost of certifying interpreters is not staggering; in fact, it is small indeed and would very likely result in substantial overall savings by the government which now uses non-certified interpreters on a per-diem basis. Regularly, their work must be redone when the case comes to court. This would not be the situation if they were certified. Furthermore, certification would result in a tremendous savings of court time. For example, I have been told that in United States v. Badalamenti, there have been continuing disputes as to the accuracy of the translations and competency of the interpreters, because of the interpreter's non-certified status. Certification would stop this waste of most expensive trial time. Third, I would suggest that the Administrative Office be restricted from using outside contract vendors without a special showing of need. I would leave the formulation of training programs and the initial implementation of the Act to the Task Force. While I have no brief for who should be a member of the Task Force, it is obvious to me from the submission of the Administrative Office that such an independent body is necessary or else the Administrative Office will once again ignore the aims of this remedial legislation.

## RESPONSES OF JUDGE THOMAS DUFFY TO WRITTEN QUESTIONS FROM SENATOR HATCH

1. Q. Based on your experience as a federal judge in New York City, what do you consider to be the biggest weakness with the interpretation services now being rendered?

A. As I see it, the biggest and most serious weakness with the interpretation services presently being rendered in the federal courts, is the complete lack of certification of interpreters in languages other than Spanish. Although the Chief Interpreter does her best to find and hire competent interpreters, without certification, neither the Chief Interpreter nor the Judge can be completely assured of the interpreter's competence.

2. Q. What changes would you suggest?

A. Based on my previous answer, the first and most important suggestion I would make would be to require the certification of interpreters in other languages. As I stated before, without such certification there is no assurance of competency. A second change I would suggest is that the translations generally be done in the simultaneous, rather than the consecutive mode. In this way, the translation is more likely to be complete and accurate, not to mention less time consuming.

3. Q. Do you, as a judge, do anything to satisfy yourself that a given interpreter is competent?

A. Although it is true that I speak a smattering of Spanish, Italian, Hebrew, Dutch, Russian, and Yiddish, I am in no position to test an interpreter's competency in any of those languages, and certainly not in languages I do not speak at all. The only way I am able to "test" an interpreter is by discussing the court proceedings with them to be sure they are at least able to understand court terminology (e.g., indictment, count, etc.) in English, but this is far from enough for me or any trial judge to make any finding of competency.

4. Q. In your opinion, should a defendant who can afford it, pay the court for the services of a court appointed interpreter?

A. If a defendant can afford to pay for the interpreter's services, by all means, he should be required to do so.

5. Q. Do you believe that due process requires that certified interpreters be provided in pre-trial phases, such as the grand jury, as well as for in-court proceedings?

A. As I stated in my remarks to the Senate, I believe that the requirements of due process mandate the provision of an interpreter for non-English speaking defendants at the grand jury and during other pre-trial proceedings. Because the grand jury is central in providing for the protection of the innocent in our system, certified interpreters are needed to ensure that mistakes in interpretation do not result in mistaken statements which are thereafter construed as admissions or false exculpatory statements.

Senator HATCH. Thank you, Judge. I appreciate your testimony and both of your statements. We will include the statements of all of today's witnesses into the hearing record as though they were fully delivered.

Judge GEE. Senator, might I add one sentence.

Senator HATCH. Yes, sir, Judge Gee.

Judge GEE. We are heartily in accord with the furnishing of the best interpreters available to the grand jury. This is a great advance and we would thoroughly agree with the judge and with that feature of the bill.

Senator HATCH. I have a lot of questions, but I think what I am going to do is submit them to you in writing so that you can deliberate on them and answer them for us rather than make a record in open hearing here today, because I know both of you have great knowledge in this area and both of you do very considered work. We feel particularly honored to have you here today.

With that, I will turn to Senator Thurmond.

The CHAIRMAN. I have another engagement I have got to go to. I have a few questions for the record, if you do not mind.

Senator HATCH. We will be happy to submit those.

The CHAIRMAN. Thank you.

Senator HATCH. Senator Simon.

## OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Mr. Chairman, first of all, I want to commend you for introducing this bill, and I would like to be added as a cosponsor.

Senator HATCH. Thank you. We are delighted to have you with us.

Senator SIMON. Let me just make a few general remarks, and then I will read your prepared statements.

Part of the problem we face is a cultural problem in our society. We are in the only country on the face of the earth where you can go through grade school, high school, college, and get a Ph.D. and never have taken a year of a foreign language.

You mentioned the Foreign Service, Judge. We have the only foreign service in the world where you can be admitted without speaking a foreign language. That simply has to stop.

While there are going to be some costs, as you have indicated to this program, there are costs to the system of justice right now by not moving in this direction.

Maybe we start moving ourselves in a general direction in our society that we need to move in, anyway. We are hurting ourselves economically. One of the fundamental reasons for the trade deficit is our language barrier. If you want to sell, you have to speak the language of your customer.

The day when we can sit here and just say people can come to us and speak in English and then we might sell to them is a day of the past.

I have spoken with Secretary Weinberger and Bill Casey, the head of the CIA; they have major problems. It is a societal problem that is erupting in this one area, but I think we have to approach it in a great many areas.

Mr. Chairman, I had an amendment adopted a few years ago on the Foreign Service Act. We are always having demonstration projects, so I had one to require the Secretary of State to pick nations where every one in our embassy would have to speak the language of the country where they were stationed—Marine guards, secretaries, and everyone.

Then Secretary of State Haig picked Senegal and Uruguay, and I have just received the informal reports back. They said it is just absolutely amazing the difference that made in those embassies.

We clearly have to become a Nation that is much more sensitive to other languages. Mr. Chairman, in going through the list of languages, however, I noticed that Polish and Russian are not among them. I think they ought to be added, Polish particularly.

In the State of Illinois, we have a very substantial Polish population there, and if I am going to be a cosponsor, I want it made clear that I want to have Polish added as one of the languages here.

But I think, Mr. Chairman, you have a fundamentally sound idea. Now, for practical purposes, we may need to modify it in some way. We may need to move maybe more gradually than your bill suggests, but I think we have to go in this direction.

I want to commend the witnesses for being here and for their testimony. Thank you.

Senator **Hatch**. I do, also, and I want to thank you all for being here.

Senator Grassley, do you have any questions of the two witnesses?

Senator **Grassley**. Mr. Chairman, I will not ask questions at this point.

Senator **Hatch**. We are going to submit ours in writing.

Senator **Grassley**. OK.

Senator **Hatch**. These are both excellent jurists and we feel that they will answer these questions as soon as they can.

We are grateful to both of you, grateful for the time you spent on these statements, the written statements as well as the oral statements. And we want you to know that we feel this is a very important bill. It is a technical bill, but important, and both of you have added, I think, immeasurably to our cause here today and we appreciate it very much.

Judge **Gee**. Thank you.

Judge **Duffy**. Thank you, Senator.

Senator **Hatch**. Thank you very much.

Our second panel will consist of Ms. Dena Kohn and Mr. Patrick O'Leary. Ms. Kohn is the supervisor of interpreters for the U.S. District Court for the Southern District of New York. She has been extremely helpful to my staff in helping to prepare some of the key proposals of S. 1853.

Mr. O'Leary is with the law firm of Tanaka, Ritger & Middleton. He and his firm represent Takeru Kamiyama, who was recently tried in the Southern District of New York on charges of perjury which stemmed out of testimony he rendered in Japanese through an interpreter at grand jury proceedings.

Ms. Kohn, we will begin with you.

## STATEMENT OF A PANEL CONSISTING OF: DENA J. KOHN, CHIEF INTERPRETER, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; AND PATRICK O'LEARY, ESQ., TANAKA, RITGER & MIDDLETON, ACCOMPANIED BY JOHN MOCHIZUKI

Ms. **Kohn**. Thank you, Senator Hatch. It is with great honor and commitment to the nobility of my profession, court interpreting, and the key role it plays in protecting the due process rights of non-English-speaking litigants, that I address this Subcommittee on the Constitution today in wholehearted support of the Court Interpreters Improvement Act of 1985.

My testimony as a witness before this committee has an unusual characteristic, in that I bring you my knowledge and experience in two areas that I feel are vital in assessing the need for these amendments.

One is that of a court interpreting administrator as the chief interpreter in the Southern District of New York, and the other is that of a certified court interpreter who has had experience in interpreting in the Federal courts for over a decade.

My remarks should therefore be received as representative not only of members of the court interpreting community who struggle to assist non-English-speaking litigants daily, but also from the perspective of an administrator responsible for providing hundreds of interpreters in dozens of languages within the limitations of the original act and its subsequent means of implementation.

May I begin by saying that this new legislation is not merely beneficial, not merely an improvement; it is urgently needed to remedy deficiencies in foreign language services provided today.

Among the serious deficiencies are the lack of any testing procedures for languages other than Spanish and the lack of any standards for the use of interpreters in preindictment or pretrial phases, including the grand jury.

The original bill was designed and promulgated to remedy the harsh conditions which non-English-speaking individuals incapable of comprehending their accusors faced when appearing in Federal court proceedings.

Certain substantive admissions in the original act and the means chosen to implement the act have left inadequate conditions which continue to compromise not only the due process rights of defendants themselves, but the accuracy of written and oral evidence relied upon by judges and juries for their decisions and potentially affecting the outcome of judicial proceedings.

In my written report, I have some quotes from the New Jersey task force in which they state, "The evaluation suggests that over half of all interpretive proceedings in New Jersey may involve errors committed by interpreters that potentially or actually affect the substance of such proceedings negatively."

As an interpreting supervisor in a bustling Federal court, I have repeated and continuing experience with legal and administrative problems caused by this lack of certification in languages other than Spanish.

And then there is a quote from Senator Hatch himself as to the fact that 7 years later, the situation for all linguistic minorities and the hearing impaired is virtually the same as it was before the original act was passed.

Allow me to briefly discuss what a judicial interpreter must be and do so that due process may be provided to non-English-speaking litigants.

Most individuals make a common error in their concept of an interpreter in assuming that knowledge of two languages qualifies one to interpret or translate. Many shocking examples of this misconception have affected, and continue to affect, interpreting in judicial settings, such as the use of barely literate relatives to translate at the witness stand, untrained court employees who happen to have foreign surnames to interpret guilty pleas, and even the use of a courthouse janitor to interpret for a Polish-speaking litigant.

While many of these bilingual individuals may have the best intentions, legislators should be made aware that untested, untrained and, in large measure, unqualified speakers of a foreign tongue are acting as the foreign litigant's only voice in court.

The United States should not continue to shut its eyes to the unfair conditions that plague so many of these non-English speakers. This new bill can remedy many of these problems.

Court interpreting is a highly skilled technique and art which requires a variety of complex abilities and knowledge for a particular setting. A court interpreter must not only possess a thorough and sophisticated command of two languages; he must have indepth knowledge of the American legal system and proceedings, legal terminology, an enormous range of vocabulary and style from slang to erudite idioms, great mental and physical agility in order to convert one language into another with but a few seconds to choose the accurate equivalent, speed, flexibility, and ultimately creativity.

These are but a few of the skills which a court interpreter must possess, and as in any highly skilled profession such as law, medicine, accounting or court reporting, interpreters, and most especially in an official legal context, should be qualified through objective licensing or certification procedures. As Judge Duffy pointed out before, this, so far, has only occurred for Spanish interpreters.

As far as the requirements for the simultaneous style of interpreting, it is clear under the fifth and sixth amendments and the essential *Negron* decision that the only effective way to keep a defendant informed is through the simultaneous technique in which, at the same time that statements are made in court, the defendants are receiving the rendition in their language. Thus, it is very important that the style of interpreting be changed to simultaneous rather than consecutive in the act.

Therefore, in conclusion on this portion, I would like to say that I commend the decision to qualify eight more major languages. The change is fundamental in curing a serious imbalance that is being provided today.

With regard to percentages and statistics, it is argued that a small portion of cases occur in languages other than Spanish. Well, decimal points and figures cannot negate the fact that over the years thousands of litigants have appeared throughout the United States who speak neither English nor Spanish and have received untested, and therefore potentially, if not actually, unqualified interpreters.

The experience of the Southern District of New York is one of a constant and frustrating search for interpreters in 20 langages, including, among others, Italian, Arabic, and Chinese. We do have some Russian and Polish defendants, too.

In the last 12 months, for example, we have had literally hundreds of court proceedings in languages other than Spanish and we were unable to provide the same objectively reliable interpreters as we were to Hispanic defendants.

Can anyone justify to a Mandarin-speaking defendant facing years of imprisonment the use of an interpreter who has in no way been tested either in the simultaneous skill or in American legal terminology when down the hall in the same courthouse, an Argentinian, for example, accused of the same crime does receive a certified, tested, and qualified interpreter?

We have tried to survive this problem, and the State Department list of interpreters has been helpful, but I must stress that the State Department does not test for the specific skills required in judicial interpreting.

The ability to interpret for a visiting dignitary is no indication of an interpreter's knowledge of terms; for example, such as rebuttable presumption, peremptory challenge, or aiding and abetting the commission of overt acts, to name just some of thousands of legal terms that come up every day.

I say with genuine regret as a supervisor of interpreters that unless myself or my assistants speak the other languages, we are hoping and guessing, along with the defendants, along with the judge and jury, that the words emanating from the mouths of the interpreters bear some resemblance to the original meaning.

I would like to talk about this Arabic trial that Judge Duffy referred to before Judge Sprizzo. When I first went into the courtroom to watch them interpreting, I breathed a sigh of relief when I saw their mouths moving. I said, well, at least they are not just sitting there or giving little summaries every 10 minutes.

However, the truth is, as the judge has said, that they could have been whispering poetry, love stories, or their own little summaries of the testimony. Who in a courtroom can determine whether the translation is faithful to the original intent or not? Only the interpreter, and for obvious reasons he or she is the last person to remove himself for incompetence.

In this particular trial, there were problems with one of the interpreters. In fact, he had to be removed. And the defendants, when they took the stand, requested one of the interpreters rather than the others because they felt unsatisfied with them, and these were the best Arabic interpreters that I could find at the present fees.

In another Federal court on the east coast, there is a self-styled Sicilian Italian interpreter who is exclusively used to interpret court proceedings. I happen to speak Italian, and in a 5-minute telephone conversation in which he offered his services to the southern district, he made so many mistakes in a basic conversation that I could barely understand what he said. Yet, this man continues to interpret important organized crime cases in a Federal court.

What I am saying about this is that if there are no legislative restrictions on the quality of the interpreters in the other languages, this problem will continue. I have many stories in my written statement as to observations I have made.

I will not quote all of them now, but there are very sad stories such as a woman who had been raped. Her answer to the question, what did he do next, was—her actual answer in Spanish was he told me to lie down on the floor of the elevator. The interpreter said, he told me to get off at that floor.

Therefore, the line of questioning went completely off; it was contradictory to her grand jury testimony. I found out later the defendant was acquitted. We can only speculate if the misinterpretations were a factor.

There are many points I wanted to get to. Let me move on. As far as the argument that we do not have enough money, there is evidence that testing devices can be created for much less money—I am on page 12 at the bottom—than that which was utilized in the four Spanish certification exams.

In an article entitled "The Court Interpreter's Test Design", written by Ms. Etilvia Arjona, an acknowledged expert on court interpreting, test development, and a primary consultant in the original Spanish certification exam, she gives a thorough description of how the test was developed.

In brief, it is fair to conclude that even following the original design of the Spanish examination, with a shorter period of time for the test because there would be much fewer candidates, a thorough and proper examination could be developed—and this is a very generous figure—for $150,000 per test.

If you would like more information as to that, I would urge you to refer to the testimony of Etilvia Arjona which has been submitted before this committee in which she gives details on costs.

I must stress that repeating or multiplying the Spanish test figures from the Administrative Office is misleading because the number of candidates for the new tests would be greatly reduced and an approved test methodology already exists.

We should no longer continue to use the excuse of impossibly high costs to continue to deny so many foreign litigants both due process and equal protection under the law. Just as legislators have recognized the need to expend funds for national defense or for diplomatic interpreting services through the Department of State, they should recognize the need to provide a responsible and equal environment for non-English-speaking persons before American courts.

In conclusion, I would like to refer to the very important phase of the new amendment, which is the preindictment proceedings. Once again, we have ongoing, bitter experiences in the Southern District—I am on page 15—as to the problem between the services provided at the preindictment and pretrial phases and in court.

I believe the U.S. attorney's office itself would benefit from being provided certified and qualified interpreters. Many of the legal difficulties which delay trials and provide appellate arguments could be avoided.

You should know that at present there are no objective standards utilized in hiring interpreters for the grand jury in the southern district, and I understand that it is the same in virtually all of the U.S. attorneys' offices.

Interpreters themselves have told me how they offer their services and are hired. They give their name and number to an administrative clerk and they tell them they are interpreters. No investigation of their qualifications; no security checks, except in the most unusual cases; and certainly no observation or testing is done before the individuals are hired. I think it is clear what the implications of that system must be.

Also, written translations are deeply affected by this problem. In this recent Arabic case, we had a problem in which the interpreters hired by the Department of Justice billed at a cost of $150,000 for wiretap translations. The translations were so poorly done that during trial, the defense attorneys had to have them redone, probably thus doubling the cost, causing great delays in the trial.

The court translators who redid the tapes had to testify at trial and it really was a serious legal issue which could have been avoided if we had certified translators in these languages.

I also praise in my written speech the instigation of standards. I think that is very important. There are no standards presently throughout the United States that have been promulgated.

There is a bit of a laissez-faire attitude going on in most of the courts where each one decides to do what they want. In the Federal court in Newark, many noncertified Spanish interpreters are being hired when certified interpreters are available.

And you must remember that there are only six Federal courts in the United States that have interpreting supervisors where we do attempt to monitor to some extent. The other courts—no one knows and no one can know what is happening in interpreting because, as Judge Duffy said, if the judges themselves are not bilingual, there is no verification of what is happening.

I also must applaud the new fee schedule. I would like to say that I have had great difficulty hiring the best interpreters because of the fact of the limitations in the fees.

There is no reason why—in simultaneous settings in our courtroom, in multidefendant trials like the "pizza connection case"—no reason why court interpreters should not be receiving the same simultaneous fees that conference interpreters receive.

I can tell you as an experienced interpreter in both fields that the work is not only as difficult, it is more difficult, in a courtroom setting. So I believe that the higher fee would be appropriate for those settings in court that are, in fact, on a conference level, which are multidefendant trials.

I will wind up my oral statement by making reference to the task force. It is important to focus on the purpose of this task force and the vital role it can play in assisting the Director of the Administrative Office.

The recommendations to be made by this task force are broad in scope and will not only address the needs of interpreters, but will assist in identifying and streamlining procedures leading to higher quality and more efficient services.

Such areas as new testing devices, a program for certifying written translations so the problems such as those that occurred in the Arabic trial do not have to occur again, training of interpreters, which is fundamental, and monitoring of their performance, will ultimately solve many of the problems that confront non-English speakers and cause delays in our courts today.

There was a task force assembled once by the Administrative Office, but it had a limited function in preparing the Spanish examination. The mandate of this task force addresses intraprofessional issues relative to actual court interpreting, and because of its mandate it is essential that the task force be composed, as designed in the bill, of individuals who are active participants in the provision of interpretive services.

There must be an independent and objective panel of working interpreters, with the assistance of a Federal judge, which can make recommendations on how to best implement new programs.

In conclusion, speaking as an interpreting supervisor and a member of a profession whose function it is to lead foreign defendants out of the dark path of incomprehension through words, I urge that all of these amendments be passed so that our courts can begin to provide equal protection through equal services to all litigants.

And please permit me to read one line—Ms. Arjona was unable to be here today and her testimony is extremely helpful. Quoting from the last paragraph of her written testimony to the committee, "There is no doubt that the new act does exactly what its title claims—improve the 1978 act. Anyone truly interested in furthering qualified professional interpretation in our Federal court system cannot but wholeheartedly approve of a bill that significantly improves the 1978 Court Interpreters Act, a landmark legislation that has comprehensively and positively transformed all levels of professional interpretation services in our country."

Thank you for your attention.

[The prepared statement and responses to written questions follow:]

## PREPARED STATEMENT OF DENA J. KOHN

Chairman Hatch and distinguished members of the Committee, it is with great honor and commitment to the nobility of my profession, court interpreting, and the key role it plays in protecting the due process rights of non-English speaking litigants, that I address this Committee on the Constitution today, in whole-hearted support of the "Court Interpreters Improvement Act of 1985" No. S. 1853.

My testimony as a witness before this Committee has an unusual characteristic in that I bring you my knowledge and experience in two areas that are vital in assessing the need for these amendments: one is that of a court interpreting administrator, as the Chief Interpreter of the U.S. District Court, Southern District of New York, and the other is that of a certified court interpreter who has had direct contact as a Federal court interpreter and translator for over a decade. My remarks should therefore be received as representative not only of members of the court interpreting community who struggle to assist non-English speaking litigants daily, but also from the perspective of an administrator and supervisor responsible for providing hundreds of interpreters in dozens of languages within the limitations of the original Court Interpreters Act and its subsequent means of implementation.

May I begin by saying that this new legislation is not merely beneficial, not only an "improvement", it is urgently needed to remedy deficiencies in foreign language services provided in Federal courts today. Among the most serious deficiencies are the lack of any testing procedures for languages other than Spanish and the lack of any standards for the use of interpreters in pre-indictment phases, including the Grand Jury.

The original bill was designed and promulgated to remedy the untenable and harsh conditions which non-English speaking individuals, incapable of comprehending their accusers, faced when appearing in Federal court proceedings. Certain substantive omissions in the original Act and the subsequent means chosen to implement its provisions have left inadequate conditions which continue to compromise not only the due process rights of defendants but the accuracy of written and oral evidence relied upon by judges and juries for their decisions and thus potentially the outcome of many judicial proceedings. Quoting at page 108 from a recent New Jersey Task Force study on interpreting services

> ". . . this evaluation suggests that over half of all interpretative proceedings in New Jersey may involve errors committed by interpreters that potentially or actually affect the substance of such proceedings negatively . . ."
>
> ". . . actually or potentially critical testimony is often omitted completely or partially, added to or amended . . . ."

As an interpreting supervisor in a bustling Federal court, I have repeated and continuing experience with the legal and administrative problems caused by this lack of certification in languages other than Spanish. As Senator Hatch so succinctly stated in introducing this new Bill,

> ". . . the harsh and incomprehensible courtroom environment faced by linguistic minorities other than (Hispanic Americans) and the hearing impaired is much the same today as it was seven years ago, prior to the adoption of the Court Interpreters Act. . . ."

Before addressing each of the major amendments and some actual courtroom incidents that demonstrate the need for this Bill, allow me to briefly discuss what a judicial interpreter must be and do so that due process may indeed be provided to non-English speaking litigants.

Most individuals make a common error in their concept of an interpreter in assuming that knowledge of two languages qualifies one to interpret or translate. Many shocking examples of this misconception have effected and continue to effect interpreting in judicial settings, such as the use of barely literate relatives to translate at the witness stand, untrained court employees with foreign surnames to interpret guilty pleas, and even the use of a courthouse janitor to interpret for a Polish-speaking litigant. While many of these bilingual individuals may have the best intentions, legislators should be made aware that untested, untrained, and in large measure unqualified speakers of a foreign tongue are acting as the foreign litigants only voice in court. The United States must not continue to shut its eyes to the primitive and unfair conditions that plague so many non-English speakers in its courts. This new Bill can remedy such bitter realities.

Court interpreting, like all professional interpreting, is a highly-skilled technique and art which requires a variety of complex abilities and knowledge for a particular setting. A court interpreter must not only possess a thorough and sophisticated command of two languages, he or she must also have in-depth knowledge of the American legal system and proceedings, legal terminology, an enormous range of vocabulary and style (from Slang to erudite idioms), great mental and physical agility in order to convert one language into another with but a few seconds to choose the accurate equivalent, speed, flexibility and ultimately creativity. These are but a few of the skills which a court interpreter must possess in order to perform accurately and thoroughly. As in any highly skilled profession, such as law, medicine, accounting or court reporting, interpreters, most especially those in an official legal context, should be qualified through objective licensing or certification procedures.

As far as court interpreting techniques which must be applied, it is now the accepted standard, in response to the Fifth and Sixth Amendments of our Constitution and several landmark decisions such as the Negron case, that the only way in which a defendant can fully participate in a legal proceeding, is for him to be thoroughly and immediately apprised of the evidence as it is presented. This immediate participation can only be obtained through what is known as the "simultaneous" technique. The Negron decision effectively mandated the use of simultaneous interpretation to provide due process. While many of the major Federal courts use this technique, through whispering to one defendant or using equipment for multiple defendants, many state and Federal courts do not provide this type of running verbal translation. The new Bill remedies this problem by making "simultaneous" rather than "consecutive" the official mode of interpretation.

With the above comments in mind, I address myself specifically to Section 1827(b)(1) of Title 28 U.S. Code, which would now require the director of the Administrative Office of the U.S. Courts to certify through performance examination, after consultation with an independent board of professional interpreters described as "the National Court Interpreters Special Task Force," nine major languages including American sign language for the hearing impaired. This change is fundamental in curing a serious imbalance in services provided to Spanish-speaking defendants and all other non-English speaking defendants in our Federal courts.

While it may be argued with percentages and statistics that a small portion of cases occur in languages other than Spanish, decimal points and figures cannot negate the fact that over the years thousands of litigants have appeared throughout the United States, who speak neither English nor Spanish and have received untested and therefore potentially unqualified interpreters. The experience of the Southern District of New York is one of a constant and frustrating search for interpreters in over 20 languages, including among others, Italian, Arabic, and Chinese. In the past 12 months, for example, we have had literally hundreds of court proceedings in languages other than Spanish and were unable to provide the same objectively reliable interpreters as we are able to provide to Hispanic defendants. Can anyone justify to a Mandarin-speaking defendant facing years of imprisonment the use of an interpreter who has in no way been tested in the simultaneous skill or in American legal terminology, when down the hall in the same courthouse, an Argentinian for example, accused of the same crime, is receiving a certified, tested and qualified interpreter? Our court and many others have attempted to survive the problem of no objective standards for foreign language interpreters, but I must categorically state that the solutions sought were and are unsatisfactory. The State Department list of interpreters is a source of assistance. However, it must be stressed that the State Department in no way tests for the specific skills required in judicial interpreting. The ability to simultaneous interpret for a visiting dignitary is no indication whatsoever of an interpreter's knowledge of terms such as "rebuttable presumption", "peremptory challenge," or aiding and abetting the commission of overt acts" as a few examples. I say with genuine regret that in dealing with any foreign language which neither myself nor my assistants speak, we are hoping and guessing, along with the defendant, judge and jury, that the words emanating from the mouths of the interpreters bear some resemblance to the original intended meaning.

In a recent five month trial of numerous Arabic-speaking defendants before Judge Sprizzo of the Southern District, several interpreters were hired based upon resumes and interviews, alleged experience as court interpreters and assurances made by the interpreters themselves that they were competent for the task. These were the best Arabic interpreters that I could find at the fees currently allowed by the Administrative Office (reference will be made to cost structures later in my comments). When I first went into the courtroom to observe this trial I breathed a sigh of relief when I saw the mouths of the interpreters moving. "At least they are not sitting mute, or giving little summaries every ten minutes", I said to myself. However, the truth is they could have been whispering poetry, love stories or their own little summaries of the testimony. Who in a courtroom can determine whether the translation is faithful to the original intent or not? Only the interpreter can make this assessment, and for obvious reasons, he or she is the last person to remove him or herself for incompetence. In this particular trial, colleagues revealed that constant and blatant mistakes were being made by one of the interpreters and he was ultimately dismissed. Later, several defendants testified in their own defense, requesting through their attorneys to use a specific interpreter among the team because they felt unsure with the others available. This is not an isolated example.

In one of the Federal courts in the east coast a self-styled Sicilian-Italian interpreter is exclusively used to interpret court proceedings and witness testimony. I happen to speak Italian and in a five minute telephone conversation with this individual, he made so many mistakes that I could barely understand a word he said. Yet this man continues to be permitted to interpret important organized crime cases. In a well-known case involving Greek defendants in the Southern District of New York, the United States Attorney's Office hired a "Greek" interpreter to translate for a crucial witness against the defendants. This interpreter was so incompetent that she confused the words "man" for "boy", "him" for "her" "house" for "apartment" and was completely stymied at the witness stand over such words as "mortgage", "deed" and "lease." We were lucky enough to have another Greek interpreter present who heard these mistakes and the U.S. Attorney was persuaded to replace her. I must stress that I am relating problems in a court which has professional interpreting supervision and control. One can only begin to imagine how many errors of this nature, how many miscarriages of justice have been and will continue to be made in courts with no interpreting departments, where interpreters are hired on the basis of their own assurances of competence, on a glance at a resume, or a recommendation from an agency that does not test for courtroom skills.

Miscarriages of justice in the Spanish language on the state court level have been observed and are indicative of the general state of interpreting services in the United States. In one of these cases, a woman who had been raped on an elevator testified after having previously given testimony before a Grand Jury. At trial the attorney asked the following question: "What did he do next?" Her reply in Spanish was "he told me to lie down on the floor." The official interpreter translated her answer as "He told me to get off at that floor." This caused the court to hear inaccurate testimony which was not her own and to throw off the entire line of questioning. I was told that the accused rapist in that case was acquitted. We can only speculate whether or not the misinterpretations were a factor in this acquittal. In yet another case, a defendant was accused of attempted assault with a dangerous weapon. The lawyer asked the victim of this attempt "did he swing the knife at you?" The translation given to the victim-witness was "did he strike you with the knife?" which was inaccurate and implied an actual, rather than attempted assault. Since the witness only heard "Did he strike you with the knife" his answer to a question about a threat was "no". These are but a few examples of the type of errors that are occurring daily in American courts. In the hearings held on the original Interpreters Act, the problem of assessing accuracy was repeatedly addressed. While many witnesses urged the taping of all foreign language testimony, the designers of this legislation agreed that the best method of guaranteeing minimum levels of competency was through a certification procedure.

For all of these reasons, I contend that the amendment which mandates certification through testing procedures for the nine specified languages is crucial. Arguments may be made about the costs which would be incurred for these supposedly "minor" languages. But there is evidence that testing devices can be created for much less money than that which was utilized in the four Spanish certification exams. In an article entitled "The Court Interpreters Test Design" written by Ms. Etilvia Arjona, an acknowledged expert on test development and a primary consultant in the original federal Spanish certification examination, a thorough description of the five phases of developing and administering that exam, with costs, is described. After reading this article and consulting with Ms. Arjona, it is fair to conclude that by following the original design and using fewer teams of testers over a shorter period of time, for reduced numbers of candidates in the newly targeted languages, a thorough and proper examination could be administered at a maximum cost of $150,000. In quoting this figure we are assuming that new certification examinations would be created with the design and methodology that already exists, enabling future work to be streamlined.

In accordance with this scenario, the proposed Task Force would be asked to make an independent analysis of how to best certify other languages and might suggest utilizing the existing test design or using other testing procedures. I must stress that repeating or multiplying the Spanish test figures is misleading because the number of candidates for new tests would be greatly reduced and an approved test methodology already exists. By stating these approximate figures, I have indicated that certification of other languages is economically feasible. We should no longer continue to use the excuse of "impossibly high costs" to continue to deny so many foreign litigants both due process and equal protection under the law. One of the bulwarks of our American system is protection from being "deprived of life, liberty or property without due process of law." Just as legislators have recognized the need to expend funds for our national defense, or for diplomatic services through the Department of State, they should recognize the need to provide a responsible and equal environment for non-English speaking persons brought before American courts.

With respect to a national obligation to provide adequate language services, I direct myself to one of the major improvements contained within this legislation, which is the mandated use of certified and/or qualified interpreters in pre-indictment proceedings, including the Grand Jury. Once again, my experience as a court interpreting supervisor may assist you in understanding the implications of having such a marked distinction between the services provided at in-court proceedings, and those provided during the investigative and accusatory phases, handled by the Department of Justice. In our court, we experience on-going and significant problems stemming from the use of unqualified interpreters by the U.S. Attorney's Office. I should point out that the U.S. Attorney's Office itself would benefit from being provided certified and qualified interpreters. For example, many of the legal difficulties which delay trials and provide appellate arguments could be avoided.

At present there are absolutely no objective standards utilized in hiring interpreters for the Grand Jury in the Southern District and I understand that the same is true in virtually all of the U.S. Attorney's Offices in the United States. Interpreters have related to me the manner in which they offer services and are hired for pre-indictment work. They give their name and number to an administrative clerk and tell him or her that they are interpreters. No investigation of their qualifications, no security checks (except in the most unusual cases) and certainly no objective observation or testing is done before these individuals are hired. At the present time, moreover, the U.S. Attorney's Office in our district often uses uncertified Spanish interpreters when certified individuals are available.

On a related point, written translations submitted into evidence before the Grand Jury in the form of translations of wire taps and documents have had so many errors that they have become a continuing source of objections and time consuming legal arguments at trial. In the recent Arabic case which I alluded to previously, the poor quality of a written translation offered at trial was a major legal issue, costing the government over $200,000 with legal consequences as to the jury's conclusions about which we can only speculate. The pretrial translators billed at a total cost of over $150,000 but their translations were of such poor quality that at trial the defense attorneys had to have them redone by interpreters recommended by our office. These court interpreters testified at trial as to the numerous errors in the translations and it indeed became a major point of argument for the defense. No one in America can know at this moment what the real impact of Grand Jury and in-court testimony by foreign defendants given through interpreters has been on legal decisions. Amending the Court Interpreters Act to include pre-indictment phases is thus a truly pressing need.

Another new provision of the Interpreters Bill found at Section 1827(b)(2) requires the promulgation of regulations concerning criteria based on education, training, performance and experience for those "otherwise qualified interpreters" who are not yet certified. Even when certain major languages are certified, it is essential that nationwide standards be promulgated for those rarely used languages for which a test will not immediately be prepared. This section requires that the interpreters' performance be evaluated and monitored. At the Southern District of New York we have never been asked to report upon the effectiveness or performance of either the Spanish-certified or other language interpreters. While the six Federal courts in the United States which have interpreting supervisors do attempt to monitor interpreting performance, the overwhelming majority of courts have neither staff nor supervisory interpreters. Consequently, there is very little actual observation and no system of verification (such as questionnaires to judges and counsel) to determine whether the quality of interpreting services has been satisfactory. This legislative requirement would be a helpful incentive for the courts to hire certified Spanish and other qualified interpreters in the future. In my opinion, the fact that courts have not been asked to report on "effectiveness" or "performance" has led to a "laissez faire" attitude in the hiring of Federal court interpreters. As an example of this attitude, a court in New Jersey continues to hire uncertified Spanish interpreters for trial, through a translation agency or individually, when there are more than 20 certified interpreters available in the area.

Moving on in the Bill to the new fee schedule proposed under Section 1827(b)(3), I can state that there is an urgent need to raise the rates paid for professional simultaneous interpreters. In my opinion, fees consistent with those currently paid by the Department of State to conference-level interpreters should be provided in those in-court proceedings which are indeed equivalent to conference-level interpreting. As stated in the Bill, the Director shall prescribe a "schedule of fees." Fees should and could be adjusted to the nature of the work being performed so that the fees paid to freelance interpreters under the new Bill would not necessarily be greater than they are at this time.

There is a broad range of proceedings and styles of interpreting, from a jail interview to a multi-defendant three-month trial. In my experience hiring freelance interpreters for simultaneous trials, it is the low rate that we are currently offering that causes conference interpreters to refuse work in our court. They simply earn much more money in other settings. As a professional interpreter who has also worked in the private market in international conferences, I am confident that simultaneous interpreting in Federal court proceedings is as difficult, if not more difficult, than conference work. Court interpreters work under difficult acoustical conditions, often trying to grasp from the air the convoluted and baroque statements of often three to ten individuals interrupting each other in the heat of legal argument. Simultaneous court interpreters must be able to rapidly convert a complex American legal argument into a language that does not even have our legal concepts, and we must adjust to the speech pattern and styles of many different players, often with no preparation, and certainly with no written speeches such as those available to OAS and UN interpreters. Thus, the minimum State Department rate for simultaneous trials is not only justified, it is crucial, so that our courts may obtain and provide the finest possible interpreters.

Having referred to the major areas of improvement set forth in S. 1853, I would like to complete my remarks by praising the creation of a "National Court Interpreters Special Task Force" as enumerated in Section 1929.

It is important to focus on the purpose of this Task Force and the vital role it will play in assisting the Director of the Administrative Office in addressing new and persisting interpretative issues. The recommendations to be made by this Task Force are broad in scope and will not only address the needs of interpreters but will assist in identifying and streamlining procedures leading to higher quality and more cost efficient services. Such areas as new testing devices, a program for certifying written court translations, training of interpreters and monitoring of their performance will ultimately solve many of the problems confronting non-English speakers using interpreters in our courts. Whereas a "task force" previously assembled by the Administrative Office has the limited function of preparing the Spanish examination, the Task Force established by this Bill has a mandate which addresses specific intra-professional issues relative to actual court interpreting services. Because of its mandate, it is essential that the Task Force be composed, as designed in this Bill, of individuals who are active participants in the provision of interpretative services. There must be an independent and objective panel of working interpreters, with the assistance of a Federal judge, which can make recommendations on how to best implement new programs. Any programs or procedures which would ultimately be carried out by the Administrative Office would have the necessary validation which results from an objective and autonomous body of experts contributing its research and findings.

In conclusion, speaking as an interpreting supervisor and as a member of a profession whose function it is to lead foreign defendants out of the dark path of incomprehension through words, I urge that all of these amendments be passed so that our courts can begin to provide equal protection through equal services to all litigations regardless of their native tongues. Thank you for your kind attention.

RAYMOND F. BURGHARDT
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

March 17, 1986

Honorable Orrin G. Hatch, Chairman
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

It was a true honor to appear before your Subcommittee on the Constitution to testify in support of the Court Interpreters Improvement Act of 1985. This legislation is a major step forward in the provision of language services that meet the constitutional guarantees which you, and your committee, labor so arduously to protect.

For the past ten years I have been a witness to the violations of due process that occur in improper and inadequate interpreting and translating services. This bill is essential so that we can place foreign defendants and other litigants in an equal position before the courts.

Allow me to commend you on the quality of this Act and on your committment to bringing about its swift passage in the Senate. Judges, litigators, defendants and interpreters will only benefit from these new provisions. A careful analysis of potential costs in implementing these new provisions will show that they are relatively minimal. As you so properly stated in introducing the bill in November, 1985, we cannot put a price tag on the protection of one's right to due process.

I have enclosed a copy of the questions which you and Senator Thurmond posed and my reply thereto. I hope that my testimony will be of assistance to your subcommittee and I will be most willing to provide you with any additional information you might need while this bill is pending.

Sincerely,

Dena J. Kohn

Dena J. Kohn
Chief Interpreter
U.S. District Court- Southern District
of New York

## RESPONSES OF DENA J. KOHN TO WRITTEN QUESTIONS FROM SENATOR HATCH

1. What would you say is the single biggest problem with the court interpretation services now being administered in our federal courts?

While I believe that the individual problems are a direct result of a lack of broad policy in the administration of the Court Interpreters Act, if I had to chose the single most pressing problem, it would be the quality of services provided by foreign-language interpreters other than Spanish-speakers. As a court supervisor I am confronting due process problems every day in that the non-Spanish speaking interpreters are in no way tested or qualified to appear in court. As I stated in my testimony before the committee, extending the Act's mandate to the Grand Jury will not, in itself, solve the problem of unqualified interpreters. For example, even if the Grand Juries had been obliged to use "certified" interpreters in the past, there were no certified interpreters to be used, with the exception of Spanish. Therefore, in order to cure the problem of both post and pre-indictment interpreting failures, certification through objective testing must be swiftly implemented in the major languages.

2. Do you feel the proposals contained in S.1853 are sufficient to take care of present problems?

Yes. I believe that the Act is extremely thorough and includes all of the necessary measures to alleviate interpreting problems in federal court. (Please see answer at no. 5 on Task Force for more clarification).

3. Tell us how you presently go about obtaining the services of an interpreter. Do you have a list of approved names? What is involved in your selection process?

Before I describe the selection process used at the Southern District of New York I would like to reiterate that these are measures taken in the face of an untenable reality; no objective certification of any language except Spanish. Naturally our department must make efforts to hire whom we consider to be "the best", but we have no firm or reliable basis to conclude that the interpreters' performance is adequate unless we speak the language in question.

Over the past five years in which our department has existed, we have developed what can only be deemed an "in-house" list. We have recruited through state courts, universities, word-of-mouth, and the Department of State list of escort interpreters. Occasionally we have had to resort to translation agencies, which are a highly unreliable source, since they do no testing of their free-lance contractors. After making contact with these "interpreters" we receive their resume and perform a personal interview, in an attempt to at least determine their English skills, and their knowledge of simultaneous and consecutive interpreting. Several years ago the Southern District of New York prepared a videotape entitled "Court Interpreting in the Federal Courts" in which a mock-trial is followed from arrest through sentencing. This film has not only proved to be an excellent training tool, we have begun to use it to "test" interpreters in many foreign languages. Of course, if we do not speak that foreign tongue, we have no way of verifying the quality of the performance. However, certain things can be discovered when submitting a potential interpreter to this videotape and recording 15-20 minutes of his rendition. Often the interpreter becomes completely stymied and sits silent for long periods of time. This is a good indication that the individual is not competent to perform at a federal court level, because he cannot keep up, cannot do a simultaneous rendition.

In general we attempt to guess at someone's ability, based on his or her own assertions (through resumes) or through recommendations from agencies such as the Department of State.

This selection is essentially one of "paper qualifications" or the limited testing done at the State Department. We also call upon conference level interpreters from the two major conference associations in the world: TAALS and AIIC. These are highly qualified simultaneous interpreters and we have had some success in referring to their membership. However, most often they will not work at federal court rates and often they are not familiar with federal court terminology and need extensive preparation in order to perform accurately.

4. Are we now attracting good interpreters to our courts, or are we seeing competent people seeking higher paying work elsewhere?

The federal courts are not attracting the best interpreters because they simply earn much more money in other contexts. Simultaneous interpreting fees are approximately $350.00 in the private sector. As we have pointed out in previous testimony, simultaneous court interpreting is as rigorous as all other such interpreting. On many occasions, as Chief Interpreter, I have had the experience of not being able to hire the best available individuals, such as Mandarin interpreters from the U.N., because our rates are much lower than what can be obtained in virtually all other settings. Not only is the rate higher in the private sector, most federal agencies are paying interpreters and translators higher rates than the courts do. I am informed by many of the free-lance interpreters whom we attempt to hire that DEA, Customs and State Department are offering fees that add up to approximately $250.00 a day. This is precisely what the new amendment on fees calls for. It is undeniable that our best interpreters do seek higher paying work elsewhere and have informed me that when they obtain such higher fees they are not available to the courts.

I would like to take the opportunity in this question to point out that the increase in daily fees, in accordance with the State Department conference rate, should be commensurate with those federal proceedings that are of a "conference" level. Not all proceedings merit the conference rate, in my opinion. However, it is a serious threat to our courts, and the providing of due process to foreign defendants, if we continue to deny the simultaneous rate in prolonged and/or multi-defendant proceedings. Our courts will continue to lose the best interpreters if we do not at least become competitive with governmental rates.

5. Why do you feel the task force called for in S. 1853 is necessary?

The task force, with its specific mandate , is a highly necessary addition to the original Court Interpreters Act because it addresses issues which have not been touched upon in the past 7 years and which must be confronted in order for interpreting services to meet federal court standards. Interpreters, those who are actively providing services in federal courts, will be in a position to make recommendations on designing programs and procedures to the designated implementors of the Act, which is the Administrative Office of the U.S. Courts.

It is clear from its past record that the present personnel at the Administrative Office have interpreted implementation of the Court Interpreters Act as the creation of four Spanish examinations. The task force, as written in S. 1853, will study and make recommendations on topics that will make interpretation services both more efficient and cost effective, such areas to be studied are economic means of administering further tests, programs for certification of documentary evidence, advice on proper training or educational programs so that potentially talented interpreters might find places to study this skilled profession, and other issues that cry out to be heard and have not, as yet, been addressed.

These tasks must be carried out not only by individuals who directly provide interpreting services, but who are now and have remained independent of financial gains from any contractual agreements with the Administrative Office. In this way, any action taken by the AO on the task forces' recommendations would have the validity which can only be obtained from the autonomy of a recommending body of professionals.

## RESPONSES OF DENA J. KOHN TO WRITTEN QUESTION FROM SENATOR THURMOND

1. Under the current court interpreters act, there has been some difficulty in establishing standards to insure the adequacy of interpretation in court. What specific recommendations would you propose to insure that only competent interpreters become certified, and are such safeguards realistically attainable?

The difficulty which has occured in establishing standards for adequate interpreting has not, in my opinion, resulted from the original legislation. The original legislation called for "certified interpreters" and the Administrative Office of the U.S. Courts properly developed an objective test standard for such certification. The problem has been that these standards have not been applied to any language except Spanish, and the new legislation would remedy that disparity.

In order to insure that only competent interpreters become certified, they must be tested just as Spanish interpreters are at this time. I have pointed out that the model examination procedure has already been funded and presently exists. At very minimal costs, certain portions could be rewritten for the newly targeted languages and we could begin the process of hiring only competent interpreters in most of the languages presently used in federal courts. These goals are quite readily attainable, both from a financial and legal standpoint. The cost in certifying a few languages each year is truly minimal when proper procedures are followed. Once interpreters are tested, it is realistic to expect that their performance will be competent. Furthermore, the new Act provides, for the first time, for "evaluation and monitoring" systems which would be of great assistance in maintaining accurate levels of performance. Many ideas have been suggested as to how such evaluation could be obtained, including proper questionnaires to judges and attorneys, occasional in-court observation by colleagues who speak the language being interpreted, some tape and video recordings, etc.

In short, the standards already exist and merely must be implemented for the major languages. Once interpreters pass a rigorous examination, and they and the courts are aware that there will be evaluations and monitoring, continued accuracy is indeed a realistic scenario.

UNITED STATES DISTRICT COURT
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March 17, 1986

REPLY TO: Newark

Senator Orrin Hatch
United States Senate
Committee on the Judiciary
Subcommittee on the Constitution
Washington, D.C.

Re: S. 1853, Court Interpreters Improvement Act of 1985

Dear Senator Hatch:

On February 25, 1986 Ms. Dena J. Kohn, the Chief Interpreter of the United States District Court for the Southern District of New York, testified before the Subcommittee on the Constitution of the Senate Judiciary Committee in support of S. 1853, the Court Interpreters Improvement Act of 1985. I have reviewed the statement of Ms. Kohn and wish to comment on it because of my strong belief that her testimony does not accurately portray a situation which she raised as an example before the Subcommittee.

In discussing the section of the proposed bill that requires that interpreters' performance be evaluated and monitored, at pages 14 and 15 Ms. Kohn states:

> "This legislative requirement would be a helpful incentive for the courts to hire certified Spanish and other qualified interpreters in the future. In my opinion, the fact that courts have not been asked to report on 'effectiveness' or 'perfomance' has lead to a 'laissez faire' attitude in the hiring of federal court interpreters. As an example of this attitude, a court in New Jersey continues to hire uncertified Spanish interpreters for trial, through a translation agency or individually, when there are more than 20 certified interpreters available in the area."

Because the District of New Jersey is a single district which encompasses the borders of this state, I am assuming that Ms. Kohn, when speaking of "a court in New Jersey" is referring to the United States District Court for the District of New Jersey. The Subcommittee should be advised that there are only six certified Spanish interpreters that live in the District of New Jersey. When Ms. Kohn states that "there are more than 20 certified interpreters available in the area," perhaps she is referring to the New York metropolitan area, which includes the District of New Jersey and the Southern and Eastern Districts of New York. The fact that there might be 20 certified interpreters in the area has nothing to do with their availability to come to New Jersey, particularly when the District of New Jersey ranges as far south as the city of Camden, more than 90 miles from New York City and 150 miles from Eastern Long Island (part of the Eastern District of New York).

Perhaps the Senate would have been better served if Ms. Kohn had taken a moment to call this Court before she went to Congress to give her testimony, and discussed what our problems are in securing the services of available certified Spanish interpreters. By my count, there are presently 84 federal judicial officers in the New York/New Jersey metropolitan area, including United States District Court Judges and Magistrates in the District of New Jersey and in the Southern and Eastern Districts of New York. The "available" Spanish interpreters must serve all of those judicial officers, in addition to the United States Attorney's Offices in the three districts. Moreover, many of these certified Spanish interpreters serve in state courts and for local prosecutors as well, in addition to their service on civil cases and deposition testimony. They may also be called upon to work in grand jury situations, as well as at various correctional facilities doing interpretation work between lawyers and their clients.

I believe it is grossly unfair for Ms. Kohn to characterize the attitude of a sister Federal Court as being "laissez faire" when she has absolutely no idea whatever about the problems of securing the services of available certified Spanish interpreters in New Jersey. Unfortunately, her failure to adequately investigate and the conclusion she has drawn cannot help but taint the flavor of the remainder of her testimony.

I respectfully request that Ms. Kohn's testimony as it pertains to the District of New Jersey be corrected to reflect the true situation. To that end, I am attaching my report to the Office of Court Reporting and Interpreting Services of the Administrative Office of the United States Courts dated June 19, 1985 for the prior calendar year. In that report, you will note this Court's expressed concern with the small number of certified Spanish interpreters within this district -- hardly a "laissez faire" attitude.

Sincerely,

Allyn Z. Lite

cc: Honorable Clarkson S. Fisher
Chief Judge, District of New Jersey
Mr. James E. Macklin, Jr., Deputy Director, Administrative Office of the United States Courts
Mr. Jon A. Leeth, Special Assistant to the Assistant Director, Administrative Office of the United States Courts
Mr. Clifford P. Kirsch, District Court Executive Southern District of New York
Ms. Dena J. Kohn, Chief Interpreter, Southern District of New York

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEW JERSEY**

**OFFICE OF THE CLERK**

U.S.P.O. & Courthouse
Newark, New Jersey 07101

ALLYN Z. LITE
CLERK

CAMDEN OFFICE
U.S.P.O. & Courthouse
401 Market Street
Camden, N.J. 08101

TRENTON OFFICE
402 East State Street
P.O. Box 515
Trenton, N.J. 08603

June 19, 1985

REPLY TO: Newark

Office of Court Reporting
and Interpreting Services
Room 776
Administrative Office of the
United States Courts
Washington, D.C. 20544

Re: Annual Report on Use of Court Interpreters

Dear Sir:

This is in response to Deputy Director Spaniol's May 10, 1985 memo requesting statistics on court interpreter use for calendar year 1984 and asking us to cite any problems which we have experienced in connection with obtaining the services of certified Spanish/English interpreters.

Between January 1, 1984 and December 31, 1984, court interpreters made a total of 239 appearances in this court. District Court Judges required a court interpreter on 217 occasions while Magistrates needed interpreters 22 times. There were no proceedings conducted in the Bankruptcy Court in 1984 necessitating interpreting services.

Interpreters speaking Spanish, Italian, Korean and Arabic appeared in this district in 1984. Appearances by language were as follows: Spanish - 128 (certified 51 - non-certified 77); Italian - 106; Korean - 1; and Arabic - 4.

The statistics regarding the appearance of certified Spanish interpreters clearly demonstrate that the vast majority of these are handled by interpreters who are not certified. Without question the major factor contributing to this problem is the fact that there are only five certified Spanish interpreters within the District of New Jersey. As the Spanish speaking population in this state grows, and as the number of Spanish speaking people appearing before this court as either defendants or plaintiffs in civil matters increases, there is a pressing need for additional certified Spanish court interpreters.

If you have any question in connection with the information contained in this letter, please feel free to contact Ronald Nau, Chief Deputy, who can be reacned at FTS 483-2084.

Sincerely,

Allyn Z. Lite

cc: Ronald Nau

RAYMOND F. BURGHARDT
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

March 18, 1986

Senator Orrin G. Hatch
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Please allow me to respond to a letter written to you by Allyn Z. Lite, Clerk of the U.S. District Court, District of New Jersey with respect to my testimony before your Subcommittee on the Court Interpreters Improvement Act. I would request that this reply be included as part of my testimony on the Act.

Throughout the years that I have served in my professional capacity as Chief Interpreter in the Southern District of New York I have been continuously consulted and informed by free-lance certified Spanish interpreters (among them those who live in the New York, New Jersey, Connecticut area) about their experiences in federal courts. As there is no interpreting office in the federal courts in New Jersey myself and my assistant are often called for an exchange of opinions and ideas.

My statement to the Committee is based upon the knowledge and belief I obtained from these highly professional colleagues.

Several interpreters have told me that they have offered their services to the New Jersey federal courts and have rarely, if ever, been hired. They expressed a readiness and eagerness to obtain such assignments. Another group of interpreters, who did not formally announce their availability, observed that although they remain on the certified list and accept assignments throughout the United States, they have never been contacted for work in New Jersey. These interpreters who live in the metropolitan area indicated that travelling to New Jersey posed no problem; that they had simply not been called. Just yesterday a professor who was certified in the fall spoke with my full-time assistant, asking for advice on how he might obtain work in the New Jersey federal courts. He lives and teaches in New Jersey.

May I add that I stand ready to assist any federal court in the area that seeks advice and information on obtaining certified interpreters and if the New Jersey courts were to call I am certain that I could help them in finding these interpreters who are most anxious to obtain assignments.

I would like to take this opportunity to reiterate my support for all of the amendments that you proposed in this legislation. The passage of this bill will be of significant assistance to those of us who are striving to provide the highest quality interpreting services in the federal courts. If I can be of any further assistance, please feel free to contact me.

Sincerely,

Dena J. Kohn
Chief Interpreter

cc: Clifford P. Kirsch, District Court Executive-S.D.N.Y.
Honorable Clarkson S. Fisher, Chief Judge, District of N.J.
Mr. James E. Macklin, Jr. Deputy Director, Administrative Office of the U.S. Courts
Judge Kevin Thomas Duffy, U.S. District Judge- S.D.N.Y.
Allyn Z. Lite, Clerk of Court, U.S. District Court, New Jersey

Senator HATCH. Thank you, Ms. Kohn.

We will turn to you now, Mr. O'Leary, and take your testimony.

## STATEMENT OF PATRICK O'LEARY

Mr. O'LEARY. Thank you, Senator Hatch, members of the subcommittee. I am here today to speak on behalf of Takeru Kamiyama, and with me is Mr. John Mochizuki, who was the interpreter while Mr. Kamiyama appeared before the grand jury in New York City a few years ago.

I have a short statement which I would like to read on behalf of Mr. Kamiyama, and then Mr. Mochizuki would like to make a short statement, also. While reading Mr. Kamiyama's statement, I will be using the pronoun "I," but that is to refer to Mr. Kamiyama and not myself.

Senator HATCH. We understand.

Mr. O'LEARY. Mr. Chairman and members of the subcommittee, my name is Takeru Kamiyama. I wish to speak today in favor of the proposed legislation embodied in S. 1853. I believe my experiences will illustrate why improved interpretive services are necessary in the American criminal justice system.

I am a native of Japan where I have spent most of my life. I first arrived in the United States in November 1972. Since that time, I have spent the majority of my time in the United States.

In July 1981, I was called before a grand jury in New York City to give testimony regarding tax evasion charges against an individual with whom I was affiliated. Because my English language skills were limited, the prosecutors retained the services of an interpreter, Mr. John Mochizuki, during my testimony. All testimony was given only in Japanese. Mr. Mochizuki translated the prosecutor's questions into Japanese and translated my answers into English.

Subsequently, I was indicted for allegedly committing perjury before the grand jury. Eventually, I was convicted and served a 4½-month sentence in the Federal penitentiary.

I believe that recounting my experiences may be helpful to the subcommittee's understanding of the problems encountered by non-English-speaking witnesses before a grand jury. I would like to submit for the record a separate document prepared by me and entitled of "Declaration of Takeru Kamiyama," which details extensively the interpretation errors which I believe were committed in my case.

To understand how interpretive errors may arise in the grand jury hearing, it may be useful to describe how the questioning process works when a non-English-speaking witness testifies.

Initially, the prosecutor asks the question in English. The interpreter then asks the question in the foreign language. The witness answers the question in the foreign language, and finally the interpreter gives the answer in English.

The official transcript shows only the English language question and answer. There is no transcription of the foreign language dialog, presumably because the English language dialog accurately represents what was said in the foreign language.

However, what if this is not the case? If the foreign language question is different from the English question, then the witness is answering a different question. If the foreign language answer is different from the English language answer, then the witness is being misquoted.

In either case, the English language transcript gives an erroneous impression of the foreign language dialogue and the witness' actual testimony. In this way, interpretive errors really cause the criminal justice system to dysfunction at the grand jury level.

In some cases, the errors may simply mislead the grand jurors as to the facts. In other instances, the errors may work to the witness' prejudice in the form of a perjury indictment. Either way, the system is not working.

What is even worse is that the current law provides no safeguards to protect against this happening. The non-English-speaking witness probably does not know what is being said in English. There is nothing which he can do to correct any errors, nor is anyone else in the grand jury room capable of detecting interpretive errors. Everything depends on the skill and competency of the interpreter.

This contrasts with the criminal trial process where opposing lawyers and the judge can scrutinize the interpretations given. Even if they lack the linguistic skills, they can exercise some oversight by observing the witness' deportment in answering the foreign language question. If the deportment contrasts with the interpreter's answer, they can challenge the answer.

Furthermore, if the witness is the defendant, presumably his counsel knows the factual content of his testimony. If the interpreter provides an English answer which contrasts with what counsel expects, then counsel can seek correction or clarification. None of these safeguards exist in a grand jury proceeding.

I think you can see that the problem of interpretive errors is especially acute where perjury is charged. The defendant may be deprived of his liberty based not on what he said to the grand jury, but on what the interpreter said. I am sure the subcommittee fully comprehends how this is inconsistent with the U.S. Constitution.

S. 1853 proposes a substantial improvement to the current system by extending the Court Interpreters Act to grand jury proceedings. As I have illustrated, the need for qualified, competent interpreters is equally as important in the grand jury room, where everything depends on the skill and competence of the interpreter, as it is in the criminal courtroom.

I would also like to applaud the fact that S. 1853 provides that a judge, not a prosecutor, will appoint and employ the interpreters used in the grand jury proceedings. Currently, the interpreters are retained and employed by the prosecution.

In a worst case situation, the prosecutor could prevail on the interpreter, because of his employment status, to create a crime by intentionally providing false and erroneous answers. S. 1853 limits the possibility of this happening by placing the appointment and employment of the interpreter in a neutral official rather than in a potentially adversarial official; namely, the prosecutor.

This prospective change also reduces the likelihood of a more practical problem occurring. When a witness appears before the grand jury, he has no choice in selecting interpreters; the witness is totally dependent on the prosecutor's judgment as to the skills and qualifications of the interpreter.

The witness does not know who the interpreter is, what his background is, or what kind of interpretive skills he possesses. The witness is totally dependent on the prosecutor's selection. However, there is nothing in the law which requires the prosecutor to use a certified interpreter.

S. 1853 corrects the problem by requiring the court to appoint the interpreter from a list of interpreters who have been tested and certified

My purpose in furnishing this statement today is to urge passage of S. 1853. My experience illustrates that basic changes are needed to prevent the recurrence of the sort of problems which have plagued non-English-speaking witnesses in the past.

Thank you. I would like to now turn over the microphone to Mr. Mochizuki.

[Letter to Senator Hatch from members of the Japanese Diet and Japanese parties, declaration, affidavits, and responses to written questions follow:]

June 18, 1985

The Honorable Orrin G. Hatch
Chairman, Subcommittee on
Constitution
United States Senate Committee
on the Judiciary
Senate Russell Office Building
Room SR-135
Washington, D.C. 20510

My Dear Senator Hatch:

We, the undersigned members of the Japanese Diet and Japanese parties who are keenly interested in cross-cultural communications, having reviewed the record of the trial and conviction of Mr. Takeru Kamiyama, are writing to you to express our deep concern over a grave miscarriage of justice, carried out against a Japanese citizen solely because of his lack of proficiency with the English language.

The act of false swearing or perjury is a crime in Japan just as it is in the United States. The crime of perjury under the jurisprudence of both countries, however, is unique, requiring a degree of precision otherwise unknown to the criminal law. Subtle differences in meaning, the loss or addition of a single word, or changes in punctuation may be determinative of guilt or innocence. The law thus requires exacting proof of falsity and guilty knowledge, among other elements, as a prerequisite to a perjury conviction.

Obviously, the problems associated with perjury prosecutions are compounded when statements alleged to be false are uttered in a language which is foreign to the prosecution, the defense, the court and the jury.

Such is the case with Mr. Kamiyama. His allegedly false testimony before a Federal Grand Jury sitting in the Southern District of New York was given in his native language--Japanese--and interpreted into English by an interpreter selected by the prosecution. Similarly, Mr. Kamiyama responded to the interpreter's version of the prosecutor's questions in Japanese.

Unfortunately, this interpretation process introduced many misunderstandings, inaccuracies and errors into Mr. Kamiyama's testimony. These errors, which resulted from the gross incompetence of the Grand Jury interpreter employed by the prosecution, were viewed as intentional falsehoods, and Mr. Kamiyama was ultimately convicted of perjury. Significantly, Mr. Kamiyama's conviction for perjury represents the first such conviction based upon foreign-language testimony in the recorded annals of American criminal law.

A careful review of Mr. Kamiyama's testimony in Japanese reveals that Mr. Kamiyama did not say many of the things attributed to him, and indeed that he did not testify falsely. Such a review also discloses that a valid oath was not administered to Mr. Kamiyama, and that as a result of the interpreter's incompetence, he was not provided the Fifth Amendment and perjury warnings normally given to English-speaking witnesses. The prosecution, nevertheless, proceeded to try and convict him, even though, in the process, it became aware that the charges against Mr. Kamiyama were premised upon faulty interpretations.

For example, in the morning of July 9, 1981, the foreman, in administering the oath, stated, "Do you solemnly swear..." but the interpreter in interpreting into Japanese omitted the word "swear". Perjury cannot be established in the absence of sworn testimony. Further, on the same day regarding the Fifth Amendment rights under the Consititution, the interpreter interpreted the legal term "incriminate" in the prosecutor's question in a vague way. Further, on the same day, regarding the perjury warning, notwithstanding the fact that the prosecutor clearly referenced the possibility of a perjury charge, the interpreter not knowing the term "perjury" failed to properly interpret this term.

The Japanese language dialogue from Mr. Kamiyama's trial has been translated by several experts. Material errors in translation abound in the grand jury proceedings. We would like to call your attention to the following examples which are not all inclusive of the mistakes noted by us.

(1) Omitted Words: The following example from Count 11(3) shows that a sentence in Mr. Kamiyama's Japanese answer was omitted in the interpreter's English answer.

> Mr. Kamiyama's answer: As for that, you see...that is money that came from Japan, this foreign country. (And) that is the account in the name of Rev. Moon, who represents the International Unification Church, you see. The reason we put (the money) there was that it came from a foreign country, you see. (So) when the foreign brethern came, we put a portion there. One portion I had them keep in cash (so that) should a financial need need arise, it would be paid from there.
>
> Interpreter's Translation: As the money came from overseas, and part of the money may become necessary as expenses to take care of the brethren, we put it in Rev. Moon's name, who legitimately represents the International Unification Church.

The interpreter has completely omitted any comment about the fact that some of the money under discussion was retained in cash. The interpreter's translation presumes that all of the money under discussion was put into a bank account.

(2) Changed Words: The following are two significant examples where a word was changed between the prosecutor's English language question and the interpreter's Japanese language version of the same question:

(A) Count 9(1)

> Prosecutor's Question: Did Rev. Moon know that he owned stock in Tong Il, that the stock was in his name in Tong Il?

> Interpreter's Verion of the Question: So, at (or in) Tong Il, that is,...er...did (he) know that there are stocks in the Reverend's name, under his title?

The big difference in the two versions of the question are the works "in" and "at". The prosecutor is seeking information about Rev. Moon's stock ownership in Tong Il. By using the Japanese equivalent of the word "at", the interpreter is seeking information about Rev. Moon's knowledge about the location of stocks in the Reverend's name. In a sense, the interpreter was asking this: Did Rev. Moon know that there were any stock certificates in his name physically located at Tong Il? This is obviously a major discrepancy.

(B) Count 9(4)

> Prosecutor's Question: Did Rev. Moon sign any documents in connection with his ownership of stock in Tong Il?
>
> Interpreter's Version of the Question: So then... er... concerning the ownership of stock certificates, the ownership of stock...er... were there not occasions such as when the Reverend had to sign, on the documents?

The prosecutor is asking whether Rev. Moon signed documents while the interpreter is translating the question to ask whether the Rev. had to sign on the documents. There is a major difference in meaning between signing and having the obligation to sign.

(3) Failure to Translate Particular Terms: The most obvious example of this problem occurs in the July 9, 1981 First Session dialogue proceeding the interrogation. The prosecutor, in English, advised Mr. Kamiyama of the fact that false testimony could give rise to a criminal prosection for perjury or obstruction of justice. In translation, the

interpreter completely omits the words perjury or obstruction of justice. Similarly, the interpreter failed to use the word "swear" when translating the administration of oath by the grand jury foreman.

(4) Disjointed Translations: We noted numerous instances where the interpreter provided a disjointed and fractured interpretation of the prosecutor's questions. The following examples will illustrate this point:

(A) Count 10(2)

> Prosecutor's Question: You carried the checkbook with you from the very beginning of the account?
>
> Interpreter's Version of the Question: So then, from the very beginning, (you) Mr. Kamiyama [verb missing] the checkbook...[sentence unfinished]

The interpreter's version lacks a verb and never gets to the basic question of whether Mr. Kamiyama carried the checkbook.

(B) Count 12(4)

> Prosecutor's Question: Did you ask him if it was proper for you to own more stock in Tong Il than Rev. Moon?
>
> Interpreter's Version of the Question: So then, er...about such things as your holding more than a proportionate share...(relative to) what may be called the stock share of Reverend Moon, that is..., your owning more shares than the Rev.--haven't you ever talked (with him) concerning the propriety and such of that?

The interpreter's version of the question is particularly imprecise. The prosecutor's idea is not clearly conveyed. Particularly, the interpreter's version omits reference to Tong Il stock.

These are some examples of the blatant interpretation errors which infect the entire Grand Jury transcript.

However, no Japanese-language court interpreters have ever been certified under the Act. In fact, since 1978, only Spanish-language interpreters have been certified by the Administrative Office of the United States' courts.

We recognize your efforts to improve interpretive services in the U.S. courts, and we commend you for it. As part of your effort, we request that you continue to press your investigation into the circumstances surrounding Mr. Kamiyama's indictment and conviction. We hope that the fruits of your investigation will assist in the reversal of Mr. Kamiyama's conviction and will prevent similar miscarriages of justice from happening in the future.

Sincerely,

Members of House of Representatives

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|---|---|
| Motoo Abe | Member of the Committee on Finance |
| Kazuo Aichi | Executive Member of the Committee on Local Administration |
| Hideyuki Aizawa | Member of the Committee on the Budget |
| Masahisa Aoki | Member of the Committee on Education |
| Takashi Aoyama | Member of the Committee on Commerce and Industry |
| Takami Eto | Member of the Committee on Communications |
| Takashi Hasegawa | Member of the Committe on Local Administration, Former Minster of Labor, Former Minister of Transport |
| Ryutaro Hashimoto | Executive Member of the Committee on the Budget, Former Minister of Health and Welfare |
| Eijiro Hata | Parliamentary Vice Minister of Posts and Telecommunications |
| Tsutomu Hata | Member of the Committee on Agriculture, Forestry and Fisheries |
| Taikan Hayashi | Member of the Committee on Commerce and Industry |
| Chikara Higashi | Member of the Committee on Finance |
| Takeo Hiranuma | Member of the Committee on Finance |

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| Hisao Horinouchi | Executive Member of the Committee on Finance |
| Shintaro Ishihara | Member of the Committee on the Budget |
| Yozo Ishikawa | Executive Member of the Committee on the Cabinet, Member of the Committee on Foreign Affairs |
| Masahiro Ito | Member of the Committee on Judicial Affairs |
| Shozaburo Jimi | Member of the Committee on Social and Labor Affairs |
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| Shizuka Kamei | Executive Member of the Committee on Judicial Affairs |
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| Masayasu Kitagawa | Member of the Committee on Education |
| Jushiro Komiyama | Executive Member of the Committee on Science and Technology |
| Masahiko Komura | Executive Member of the Committee on Judicial Affairs, Member of the Committee on Commerce and Industry |
| Iwao Kudo | Member of the Committee on Local Administration |
| Tsugio Kumakawa | Member of the Committee on Judicial Affairs, Executive Member of the Committee on Finance |
| Yukiyasu Matsuno | Member of the Committee on Commerce and Industry |
| Asao Mihara | Executive Member of the Committee on the Budget, Former Minister of Education, Former Director General of Defense Agency |
| Noboru Minowa | Member of the Committee on Social and Labor Affairs, Former Minister of Posts and Telecommunications |

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| Hiroshi Mitsuzuka | Executive Member of the Committee on Transport |
| Moichi Miyazaki | Member of the Committee on Judicial Affairs |
| Kiyoshi Mori | Executive Member of the Committee on Judicial Affairs, Executive Member of the Committee on Commerce and Industry |
| Kanezo Muraoka | Member of the Committee on Construction |
| Shoichi Nakagawa | Member of the Committee on Local Administration, Member of the Committee on Finance |
| Hachiro Nishida | Executive Member of the Committee on Rules and Administration |
| Toru Nogami | Executive Member of the Committee on Foreign Affairs |
| Tadamore Oshima | Member of the Committee on Finance |
| Yuji Otsuka | Executive Member of the Committee on Education |
| Shin Sakurai | Executive Member of the Committee on Construction |
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| Takayuki Sato | Member of the Committee on Discipline |
| Katsutsugu Sekiya | Member of the Committee on Transport, Executive Member of the Committee on Communications |
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| Tokuichiro Tamazawa | Executive Member of the Committee on Agriculture, Forestry and Fisheries |
| Masami Tanabu | Executive Member of the Committee on Agriculture, Forestry and Fisheries |
| Sadakazu Tanigaki | Member of the Committee on Social and Labor Affairs |

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| Shunpei Tsukahara | Executive Member of the Committee on Science and Technology |
| Shigeaki Tsukihara | Member of the Committee on the Cabinet, Member of the Committee on Agriculture, Forestry and Fisheries |
| Yoshiteru Uekusa | Parliamentary Vice Minister of Hokkaido Development Agency |
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| Masatoshi Wakabayashi | Member of the Committee on Agriculture, Forestry and Fisheries, Member of the Committee on Transport |
| Hideo Watanabe | Executive Member of the Committee on Commerce and Industry |
| Kozo Watanabe | Chairman of the Committee on Communications |
| Rou Watanabe | Executive Member of the Committee on Foreign Affairs |
| Tamisuke Watanuki | Member of the Committee on Environment |
| Kenzo Yamaoka | Member of the Committee on Local Administration, Member of the Committee on Finance |
| Takesaburo Yamazaki | Member of the Committee on Judical Affairs, Member of the Committee on Finance |
| Okiharu Yasuoka | Chairman of the Committee on Construction |
| Yukihisa Yoshida | Executive Member of the Committee on the Budget |

## Members of House of Councillors

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| Masao Endo | Chairman of the Committee on Social and Labor Affairs |
| Keigi Furuya | Chairman of the Committee on Commerce and Industry |
| Minoru Genda | Member of the Committee on the Cabinet |
| Hiroko Hayashi | Member of the Committee on the Cabinet |
| Masao Horie | Chairman of the Committee on Okinawa and Northern Problems, Member of the Committee on the Cabinet |
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| Shinjun Oshiro | Parliamentary Vice Minister of Okinawa Development Agency, Member of the Committee on Agriculture, Forestry and Fisheries |
| Tomio Yamamoto | Member of the Committee on Commerce and Industry |

### Japanese Parties

| | |
|---|---|
| Ryoichi Aihara | Professor of Law, Daito Bunka University |
| Naomitsu Akazawa | Chief Editor of Monthly Magazine "Taiko" (Published by Taikosha Co., Ltd.) |
| Kenji Akiyama | Director of the Center for Information, Science, Professor of Osaka Electro-Communication College |
| Kenjuro Akiyama | Assistant Professor of Asia University |
| Buichi Amano | Attorney at Law, Former Judge of the Supreme Court |
| Akihisa Anraku | Professor of Wakayama University |
| Shin Ansai | Professor of Sophia University |
| Hideo Aoki | President of Toita Women's Junior College |
| Takenori Aoyama | Assistant Professor of Asia University |
| Goroku Araki | Executive Director of Tokyo Women's College of Home Economics |
| Hajime Arikuni | Former Vice President of Ashikaga Institute of Technology |
| Jiro Arimitsu | President of Japan Art Academy, Former President of Tokyo Women's College of Home Economics |

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| Kenji Atsumi | Professor of International College of Commerce and Economics |
| Arifin Bey | Director of Japan Research Institute, University National, Jakarta |
| Ren Chiba | Professor of Tokyo Institute of Technology |
| Yoshiyuki Chikamatsu | Former Professor of Takushoku University |
| Suu Sushi Chyo | Professor of Uetake University |
| Tomonobu Fujikawa | President of Yasuda Bussan Co., Ltd. |
| Kohshiro Fujioka | Professor of Kyushu Industrial University |
| Sadao Fujita | Vice Copy Editor of the Kanagawa Shinbun |
| Yoshinori Fujita | Professor Emeritus of Kyoto Women's University |
| Yutaka Fujita | President of Tokyo Association of Education Research |
| Kenichi Kukuo | Professor Emeritus of Nagoya Institute of Technology |
| Nobuyuki Fukuda | President of the University of Tsukuba |
| Kensaku Funakoshi | Former Professor of Hiroshima University |
| Joichiro Funato | Professor of Chukyo University |
| Nobuo Fusamura | Professor of Waseda University |
| Shinichi Furuya | Director of the Hospital of Yamanashi Gakuin University |
| Kohei Goshi | Chairman of the Board of Director Japan Productivity Center |
| Tadao Hamada | Director of Clinical Inspection, Atomic Bomb Hospital |
| Tadao Hasegawa | Professor of Tokyo University of Agriculture |
| Taro Hasegawa | President of Fukuoka Institute of Technology |
| Yoshio Hashida | Professor Emeritus of Fukuoka University of Education |
| Kiminobu Hashimoto | Professor of Chuo University |
| Masaichi Hashimoto | Professor of Kagawa Nutrition College |
| Tamotsu Hayami | Director of Transportation Economics, University of Transportation Economics |

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| Hidehiko Hayashi | Commentator |
| Masatoshi Hayashi | Assistant Professor of Yokohama National University |
| Saburo Hayashi | Professor of Tokai University |
| Teru Hayashi | Chief Representative of the Association for the Defense of Peace and Security, President of the Ryokufuen Hotel |
| Torao Hino | Former Advisor to the U.S. Army in Japan |
| Genichi Hirai | Former Professor of Osaka University of Education |
| Keiji Hiramatsu | Professor of Toyko Electrical Engineering College |
| Masatoshi Hirose | Lecturer of Seika Women's Junior College |
| Kyosuke Hirotsu | Chief Director of the New Japan Council, Former Deputy Director General of the Prime Minister's Office |
| Minoru Hisa | Professor of Wakayama University |
| Shinsaku Hogen | Chairman of the Board of Directors, Association for the Research of National Policies, Inc. |
| Hajime Ibuki | Psycholinguist, Former Professor of Katoku Gakuen Women's Junior College |
| Kohei Ichikawa | Assistant Professor of Kansai University |
| Masayoshi Ichikawa | Lecturer of Asia University |
| Tomoji Ichinose | Professor of International Christian University |
| Hiromu Iimura | Director of Japan Overseas Information Center |
| Sadako Ikaga | Professor of Keihin University |
| Eijiro Ikeda | Assistant Professor of Osaka Institute of Technology |
| Kazuo Imamura | Former Professor of National Defense Academy |
| Hiroharu Indo | Professor Emeritus of Tokyo University of Education |
| Junri Inoue | Professor of Hyogo University of Teacher Education, Curator of the University Library |
| Masaharu Inoue | Professor Emeritus of Kyushu University |

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| Yasue Ishii | Medical Doctor |
| Tameo Ishizuka | Former Professor of Shinshu University, Vice President of Odawara Women's Junior College |
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| Kiyokazu Ito | Professor of Nippon University |
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| Masaaki Kasahara | Professor of Kobe City University of Foreign Studies |
| Hideaki Kase | Diplomatic Commentator |
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| Takahito Katayama | Technical Officer of the National Defense Agency |
| Eiichi Katoh | Professor of the University of Tsukuba |

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| Yoshitaka Kawakami | Professor of Kanto Gakuin University |
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| Toshiji Kuwabara | Head of the Department of Chinese Studies, Sogo Research Institute |
| Takahide Kuwaki | Medical Doctor |
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| Masaaki Minagawa | Assistant of the Department of Engineering, Yamagata University |
| Satoshi Miura | Assistant Professor of Nagoya Institute of Technology |
| Toshiyuki Miyauchi | Former Vice President of Arabia Oil Co., Ltd. |
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| Motoaki Moriya | Professor of Kansai University |
| Muneharu Morozumi | Professor Emeritus of Shinshu University |
| Kaoru Murakami | Military Affairs Analyst |
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| Yoshio Murakami | Professor of Kinki University |

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| Futaranosuke Nagoshi | Assistant Professor of Takachiho College of Commerce |
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| Shinichi Nakamura | Minister of the Japan Christian Concert Church |
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| Yoshio Ogawa | Professor Emeritus and Former President of Tokyo University of Foreign Studies |
| Haruo Okada | Commentator of Education |

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| Koji Okamoto | Professor of Ehime University |
| Raisuke Okamoto | Professor of Law, Nippon Institute of Technology |
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| Yuzuru Ooshika | Professor of Osaka Institute of Technology |
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| Tomizo Oota | Visiting Professor of Golden State University, U.S.A. |
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| Yoshihiro Osamura | Assistant of the Department of Science and Engineering, Keio University |
| Yoshio Ozawa | Lecturer of Kinki University |
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| Saichi Sakai | Former Professor of Nagoya University of Commerce |
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| Motoo Sano | Executive Director of Japan Association for the Promotion of Pastime Culture |
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| Yasuo Sasa | Professor Emeritus of Hokkaido University |
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| Shohei Satoh | Professor of Buddhist University |
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| Keihachiro Shimizu | Professor Emeritus of Chiba University |
| Mikio Shinbou | Former Principal of Okayama City Junior High School |

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| Kentaro Sukeno | Professor Emeritus of the University of the Sacred Heart |
| Tokan Sumi | Chief Priest of Eisen Buddist Temple, Former Professor of Aichi University of Education |
| Kiyoshi Suzuki | Director of Kanchi Institute of Ecology |
| Tadashi Suzuki | Managing Director of Japan Defense Association, Inc. |
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| Tetsuo Takada | Lecturer of Niigate Seiryo Junior College |
| Iwao Takahashi | Professor of the University of Tsukuba |
| Masakazu Takahashi | Professor of Kokushikan University |
| Susumu Takahashi | Professor of Kanto Gakuin University |
| Masaomi Takanori | Assistant Professor of Kaetsu Women's Junior College |
| Masami Takatsuzi | Former Judge of the Supreme Court |
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| Tetsusen Takeda | President of Aichi.Gakuin University |
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| Shigetoshi Takenaka | Professor of Gifu University of Education, Fellow of the Institute of International Affairs |
| Akira Takei | Assistant Professor of Takasaki City University of Economics |
| Michiaki Takimoto | Professor of Toho University |
| Ryuji Tamura | Visiting Professor of Kokushikan University |
| Toshio Tamano | Lecturer of Toa University |
| Hikotaro Tanabe | Former Professor of Iwata University |
| Kumao Tanaka | Professor Emeritus of Miyazaki University |

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| Masaaki Tanaka | Lecturer of Takushoku University |
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| Tsunemasa Tenma | Lecturer of Kokushikan University |
| Shigehiko Toyama | Professor of Ochanomizu University |
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| Masaaki Tsuge | Professor of Kogakuin University |
| Shigeyori Tsukamoto | Attorney at Law, Professor of Law, Chuo University |
| Jisaburo Tsukiyama | Professor Emeritus of Kyoto Prefectural University |
| Takafumi Tsuya | Medical Doctor of the Hospital of Hiroshima University |
| Gosuke Uchimura | Professor of Sophia University |
| Rikizo Ueda | Former Professor of the University of Tsukuba |
| Naoaki Uneo | Lecturer of Meiji University, Professor of Kanto Gakuen University |
| Takashi Umeki | Assistant Professor of Komazawa University |
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| Seiichi Uno | Profesor Emeritus of the University of Tokyo |
| Yoshiyuki Uzawa | Professor of Nihon University |
| Moriya Wada | Former Commanding General of Western Army Self-Defense Force |
| Kyoko Watanabe | Official of the International Friendship Center in Commemoration of Dr. Hideyo Noguchi |
| Masao Watanabe | Attorney at Law |
| Shigeru Watanabe | Professor of Senshu University |
| Michio Yamagata | Lecturer of Meiji University |

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| Motohusa Yamakage | Head of Yamakage Shinto Denomination |
| Miyoo Yamamoto | President of Zenpon-Sha Publishing Company, Ltd. |
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| Tatsuzi Yamamoto | Former Professor of Nippon University |
| Jyumei Yamazaki | Professor Emeritus of Kochi University |
| Masahi Yamazaki | Professor of Yokohama College of Commerce |
| Takasuke Yamazaki | Assistant Professor of Kochi University |
| Shigeru Yamazi | Management Counsultant |
| Osamu Yamada | Assistant Professor of Kyoto Industrial University |
| Masakazu Yamada | Professor of the International College of Commerce & Economics |
| Tamio Yamada | Honorary Deputy President of Tokai Gakuen University |
| Syukichi Yamana | Professor of Kyoto University of Education |
| Tadashi Yamane | Attorney at Law, Former Prosecutor General of Hiroshima Prosecutors Office |
| Michio Yasuda | Attorney at Law, Former Prosecutor General of Sapporo Prosecutors Office |
| Takashi Yoshii | Advisor to Sony Corporation |
| Kenko Yoshida | Professor Emeritus of Tohoku University |
| Shinji Yoshida | President of Nagoya Junior College, Lecturer of Nagoya University |
| Hiroshi Yoshimoto | Assistant Professor of Tokai Gakuen Women's Junior College |
| Rikuro Yuhki | Professor Emeritus of Nagoya University |

## DECLARATION OF TAKERU KAMIYAMA

Takeru Kamiyama, duly sworn, deposes and states that the following facts are true and correct, and further, that I have had the entire content of this declaration interpreted to me in Japanese by a competent English and Japanese language interpreter on August 9, 1985 at Washington, DC and personally verified to my satisfaction the accuracy of all the statements contained herein.

1. I am a senior member of the Unification Church. I am a Japanese citizen and presently 43 years old. I have been in the United States since 1972. I was a defendant in the Federal criminal case, United States v. Sun Myung Moon and Takeru Kamiyama, and served a prison term starting July 20, 1984 and was released on December 4, 1984.

2. Central charge against me in that case was that I had perjured myself before Federal Grand Jury. In fact, the indictment consisted of 14 Counts of which the Court rendered a verdict against me on six perjury counts. My statements in question were contained in my Grand Jury testimonies made on July 9, 16 and 21, 1981.

3. I was born and educated in Japan and spent about 30 years living there. Suing is not a popular practice in Japan and I have had no prior experience of involvement in any court proceeding whether criminal or civil in my own country. Being faced with a criminal proceeding in a foreign country, in a foreign language, and in a completely unfamiliar proceeding, I found myself, at times, emotionally unable to deal with the pressure of continuous questioning particularly when I experienced difficulty in understanding the ambiguous, confusing and sometimes incoherent and inaccurate interpretations of the prosecutor's questions. As a result, I was, at times, confused and my responses were not entirely clear.

4. I recently listened to the recorded tapes of my Grand Jury testimony during the same three days and now have the

following recollection of my understanding then of what I was asked by the prosecutor through the Japanese interpreter.

5. In the questions and answers which subsequently formed the substance of Count 9, to the best of my recollection, my understanding of the prosecutor's questions was as follows:

> [Specification 1]: I was asked by the prosecutor about Rev. Moon's knowledge of the fact that his Tong Il stocks were kept at the company office of Tong Il, which was then located in Manhattan.
>
> [Specification 2]: I was asked whether I told Rev. Moon that there were stocks in his name. I did not really understand the point of the question. In any event, since I took it upon myself to issue shares in Rev. Moon's name without informing him, he knew nothing about it.
>
> [Specification 3]: I was a little confused about what was asked because I was asked if I had "discussed" the "talk". I guessed the same question was repeated and I simply repeated the previous answer.
>
> [Specification 4]: I understood that I was being asked if Rev. Moon had an obligation to sign the documents in connection with the ownership of the stocks. I immediately thought about the stock certificate itself and answered "no" because I did not recall that he had signed any of his stock certificates. If he had an obligation to sign the stock certificates, I assumed he would have signed them. Had I been shown the stock subscription offer by the prosecutor, my answer obviously would have been different.
>
> [Specification 5]: I simply repeated the same answer.

6. In the questions and answers which subsequently formed

the substance of Count 10, my understanding of the prosecutor's questions, to the best of my recollection, was as follows:

> [Specification 1]: I had an impression that I was asked if Rev. Moon together with me carried the check book. I did not understand the meaning of the question well. I coughed at that time and said "oh, uh, excuse me". Since having recently arrived from Japan, I was not familiar with the English language, I had some staff people handle matters relating to the checks including cancelled checks so I said I managed it.
>
> [Specification 2]: I thought I was being asked if I was in charge of the daily bookkeeping work involving the handling of checks, and, in this sense, I answered that I was in charge of it before the question was completed.
>
> [Specification 3]: I was asked whether the Reverend had written in the places other than that for the signature. As mentioned previously, since I had then just come to the United States, I did not understand English well and was not familiar with American bookkeeping practices, I left to my staff people the routine daily office work involving checks and funds. Although I did not examine all the cancelled checks, the Reverend did not write anything other than his signature as far as I knew.
>
> [Specification 4]: I was clearly asked whether all the portions of the checks other than the signature were filled in before the checks were given to the Reverend so that he could affix his signatures on them. Accordingly, I answered affirmatively.

[Specification 5]: I asked that the question be repeated because I did not understand it. To the extent I could make any sense out of it, the interpreter seemed to be asking the previous question again, that is, whether the Reverend had sometimes filled in something other than his signature onthe checks. I answered that to the extent I was aware, he had not except for his signature.

[Specification 6]: I understood the same question to be repeated again. I repeated my answer again with the qualification, "as far as I know".

7. In the questions and answers which subsequently formed the substance of Count 11, to the best of my recollection, my understanding of the prosecutor's questions was as follows:

[Specification 1]: In my understanding, I was asked about the source or origin of the 400,000 dollars. We had an informal fund called the "Family Fund". Accordingly, I answered the "Family Fund".

[Specification 2]: The same question about the 400,000 dollars was repeated so I was confused by the prosecutor hammering away and asking me the same questions over and over again. In my fear and confusion, it turned out that I said nothing about the source of the money.

[Specification 3]: At this stage, becoming exhausted emotionally, I was experiencing increasing difficulty in understanding the questions. In any event, I started explaining why Reverend Moon's name was used for the Chase Manhattan account, but I was so confused that I did not finish responding to the questions.

8. In the questions and answers which form the foundation of Count 12, to the best of my recollection, my understanding of the prosecutor's questions were something along the following lines:

[Specification 1]: I was asked if 100,000 dollars came from the Family Fund.

[Specification 2]: I was asked if I had told about any intention to buy additional stocks again later. Here, I assumed that the prosecutor had shifted his inquiry from the 100,000 dollar worth of stocks I bought in January, 1974 to some other stocks I bought later.

[Specification 3]: I assumed that this question was also inquiring about stocks I bought after January, 1974.

[Specification 4]: I did not remember clearly with whom I discussed the shares of the stock. I expressed this uncertainty elsewhere in my testimony. But, my recollection then was that I did not talk to the Rev. Moon. So, I answered accordingly.

[Specification 5]: The question was fragmented and ambiguous. Not knowing quite how to respond to it, I replied that I did not even think about whether it was proper to own more stocks than the Rev. Moon.

9. In the questions and answers which subsequently formed the substance of Count 13, to the best of my recollection, my understanding of the prosecutor's questions was as follows:

[Specification 1]: While I had some doubt as to which stocks the prosecutor was referring to, feeling hesitant about seeking a clarification, I went ahead and answered, negatively.

[Specification 2]: I was asked whether I had told Mike Warder to make a false statement regarding the circumstances which led to the purchase of the stocks.

10. In the questions and answers which subsequently formed the substance of Supplementary Count 1, to the best of my recollection, my understanding of the prosecutor's questions was as follows:

[Specification 1]: I was asked about a reason for my purchase of the Tong Il stocks. There may have been other reasons. I mentioned one that immediately came to mind which was the development of the Tong Il Enterprise, the company as distinguished from the Unification Church.

[Specification 2]: Asked if it was for the expansion of the Church, I thought the prosecutor might have become confused by the interpreter as to the distinction between Tong Il Enterprise and the Church. So, I addressed my reply to correcting what I felt was a misunderstanding on the part of the prosecutor. As for Tong Il, I did not say that the development of Tong Il had been the sole reason, but merely repeated that I had bought the stocks for the development of Tong Il Enterprise.

[Specification 3]: The interpreter ambiguously said something to the effect that I was here appearing before this Court and whether there was some other reason. The question made little sense at the time, confused me and I was not certain whether I was being asked about some other reason for my being in the Court. I was so emotionally distraught that I compulsively repeated my previous statement rather than ask for a clarification of the interpretation.

[Specification 4]: I understood that I was asked if I had had an outstanding dispute with the Immigration Office. Since I did not have any such dispute with the Immigration Office, I replied "no."

[Specification 5]: This question was ambiguous and I understood this question to be asking whether staying in this country legally for a longer period of time was a purpose even if the investment in Tong Il was not the whole purpose which made little sense to me. Up until then, I thought I was being asked about the purpose of the investment in Tong Il. In any event, I repeated my previous statement.

[Specification 6]: I merely repeated the previous statement regarding purpose of the investment in Tong Il that is, the development of Tong Il, but I clearly did not state or imply that this was the sole purpose. As I subsequently learned, the interpreter misinterpreted my response into English by inserting the extraneous word, "purely".

DISTRICT OF COLUMBIA

Takeru Kamiyama

Subscribed and Sworn To Before Me
A Notary Public in and for the
District of Columbia

This 9 day of August, 1985.

Notary Public

My Commission Expires: 8/14/89

## AFFIDAVIT OF DON C. GORHAM

Don C. Gorham, duly sworn, deposes and states that I am a qualified competent English and Japanese interpreter, that, on August 9, 1985, in Washington, D.C., I interpreted into Japanese to Mr. Takeru Kamiyama, the entire content of the attached document entitled, "Declaration of Takeru Kamiyama", and that he affirmed that the entire content of the document accurately reflects his understanding of the facts stated therein.

Don C. Gorham

DISTRICT OF COLUMBIA

Sworn and Subscribed To Before Me
a Notary Public in and for the
District of Columbia
This 9 day of August, 1985.

NOTARY PUBLIC

My Commission Expires: 8/14/89

AFFIDAVIT

I, Toshio George Tsukahira, duly sworn, depose and say that the following facts are true and correct:

1. I am bilingual in Japanese and English. I have an AA degree from Meiji University, Tokyo, and a PhD degree from Harvard University in history and Far Eastern languages. For 15 years, I served as a Foreign Service Officer with the U.S. State Department, most of which time was spent in Japan. Most recently, I have served as a consultant and lecturer on Japanese affairs. A copy of my curriculum vitae, attached as Exhibit A, is incorporated by reference and made a part hereof.

2. I have reviewed the prepared transcript of Mr. Takeru Kamiyama's testimony to the Grand Jury, empaneled by the United States District Court for the Southern District of New York, on July 9, July 16, and July 21, 1981. I have also listened to the tape recordings, containing the original Japanese language testimony, in this Grand Jury investigation. The following is a summary of my comments regarding a comparison of the prosecutor's questions in English and the prosecution interpreter's version in Japanese of the same question as heard by the witness, Mr. Kamiyama, and a comparison of prosecution interpreter's version in English of the witness' response in Japanese with the correct translation of his response in Japanese. Attached to this Affidavit as Exhibit B, incorporated by reference and made a part hereof, is a comparison of certain relevant questions and answers, as appearing in the transcript, with my translation of the actual Japanese language questions and answers as appearing on the tape of Mr. Kamiyama's testimony to the Grand Jury. All page references in this Affidavit are to the page numbers appearing on the attached comparison.

3. Count 9(1): The prosecutor's question focuses on Rev. Moon's knowledge about Rev. Moon's ownership of stock in Tong Il. In essence, the prosecution asks whether Rev. Moon knew that he was a stockholder in Tong Il. Contrastingly, the interpreter's Japanese version of the question uses the phrase "at Tong Il". Thus, the interpreter's version emphasizes the

location of certain stock certificates, not ownership in Tong Il itself. In the Japanese language question, Mr. Kamiyama was asked whether Rev. Moon knew that there were stock certificates in Rev. Moon's name physically located at Tong Il.

4. Count 9(2): This question seeks to know if Mr. Kamiyama told Rev. Moon a certain presumed fact, namely that Mr. Kamiyama had issued $50,000 worth of stock, presumably, in Tong Il, in Rev. Moon's name. The Japanese interpreter asked a question in Japanese different from the original question. The presumed fact is the existence of stock worth $50,000 in Rev. Moon's name. The interpreter asks if Rev. Moon was told that $50,000 worth of stock existed in Rev. Moon's name. The question heard by Mr. Kamiyama had nothing to do with the issuance of stock.

5. Count 9(3): The problem here is not the difference between the prosecutor's question and the prosecution interpreter's version of the question in Japanese, but rather the reference back to the previous questions. For example, the Japanese language version uses the phrase "consultations on the matter", which refers back to the previous questions. However, because the Japanese language version of the two previous questions, referred to in Counts 9(1) and 9(2), differs from the English language version, Mr. Kamiyama's answer should be understood in that context, not in the context of answering the English language question.

6. Count 9(4): The English language question starts with the presumed fact that Rev. Moon owned stock in Tong Il and asks whether Rev. Moon had to sign any documents in connection with this presumed ownership. The prosecution interpreter's version of this question in Japanese differs in these respects: (1) The presumed fact is ownership of stock certificates in general, not specifically those in Tong Il. (2) It asks whether Rev. Moon "had to sign" documents in connection with this presumed ownership of unspecified stock certificates. The English language question asks about a very specific act, namely whether Rev. Moon signed. The Japanese language question does not ask about an act but rather asks about an obligation to act, namely

whether Rev. Moon had to sign. Mr. Kamiyama answers the Japanese language question negatively, namely Rev. Moon had no obligation to sign any documents. However, this answer does not imply an answer to the English language question because Rev. Moon may have signed even though no obligation to sign existed.

7. Count 9(5): This question, although substantially the same in both the English and Japanese language versions, suffers from the same infirmity as the question appearing in Count 9(3), namely the use of a non-specific term to refer back to a previous question. In the Japanese language version, the phraseology is "about that matter". Because the prosecution interpreter's version in Japanese of the prosecution questions differed substantially from the original questions appearing in Counts 9(1), (2) and (4), the phraseology "about that matter", appearing in the Japanese version, means something different than the word "it" appearing in the English version.

8. Count 10(1): The English language question is in the past tense while the Japanese language question is in the present tense. Mr. Kamiyama answered the Japanese language question negatively. In essence, he was stating that the Rev. Moon is not currently carrying the checkbook. However, nothing can be extrapolated from this answer about the English language question, namely whether Rev. Moon at some past time carried the checkbook.

9. Count 10(2): The Japanese language question is disjointed, lacking a verb, and unfinished. To this imprecise question, Mr. Kamiyama answers, using a Japanized form of the English word "keep", "I kept it". In a financial context, the English word "keep" has at least two meanings: (1) It may mean physical possession of the accounting records. (2) It may mean inscribing information on the accounting records, such as notations in a checkbook, without maintaining physical possession. Because of the disjointed nature of the Japanese language question and Mr. Kamiyama's usage of the Japanized form of the English word "keep", it is not clear that Mr. Kamiyama's answer indicates that he had physical possession of the checkbook.

10. Count 10 (page 8): No comment.

11. Count 10 (page 9): No comment.

12. Count 10(3): No comment.

13. Count 10(4): The English language question asks if Mr. Kamiyama prepared all the checks for Rev. Moon. The Japanese language question asks if Mr. Kamiyama "wrote in beforehand all the other places" before the Rev. Moon signed. It is unclear whether the Japanese question refers to one check or "all the checks".

14. Count 10(5): No comment.

15. Count 10(6): No comment.

16. Count 10 (page 14): The English language question talks about a "checking account" while the Japanese language question talks only about a "bank account".

17. Count 11 (page 15): The English language question asks about the size of the largest single deposit made in Rev. Moon's account. From the previous question, presumably this means the Chase Manhattan Bank checking account. The Japanese language question asks for the size of the largest amount "accumulated in Rev. Moon's account". There is an obvious difference between the largest single deposit and the largest amount accumulated. The question about the largest "amount accumulated" implies the question what was the largest balance of the account, an event which, logically, could be unrelated to the largest single deposit.

18. Count 11 (page 16): No comment.

19. Count 11(1): In response to the question appearing in Count 11 (page 15), Mr. Kamiyama answered $400,000. In Count 11 (1) the prosecution, assuming that the $400,000 refers to the largest single deposit, asks where did Mr. Kamiyama "get the money . . . to deposit". While the phraseology of the interpreter's version of the question in Japanese may appear somewhat similar, it is substantially different in overall context. The $400,000 represents Mr. Kamiyama's answer to the largest amount accumulated in Rev. Moon's account. Furthermore, the Japanese language version of the question heard by Mr.

Kamiyama does not presume that he obtained the money. Rather, it merely elicits the source of the money.

20. Count 11 (page 18): The English language question continues the presumption that the colloquy involves the largest single deposit whereas the Japanese language question continues to focus on the largest amount accumulated or saved.

21. Count 11(2): The difference between the largest single deposit and the largest amount accumulated continues in the prosecution's question and the interpreter's version in Japanese of this question. There is also a difference between the two versions of the answer. The Japanese language answer implies the following sequence: The Japanese members came to America and collected money which was placed into the account. The English language version states that these Japanese members contributed the money. This suggests that the money came directly from the personal resources of these Japanese members. The Japanese language version suggests that the money came from the personal resources of other people from whom the Japanese members made collections. The English and Japanese language versions suggest different sources for the funds.

22. Count 11 (page 20): The focus of the prosecutor's question is on expenses incurred after the Japanese members arrived in America. The interpreter's Japanese version of the question is a different question in that it covers both costs incurred prior to arriving in the United States as well as after arriving here.

23. Count 11 (page 21): Since the prosecutor's question uses the negative, the interpreter's version in Japanese differs from the original question. The prosecutor's question presumes that the money was not put in a bank account. The interpreter's version of the question presumes that the money was put in a bank account. The answers are also different because the English language answer does not specify where the balance, i.e. that part not deposited in a bank, was kept.

24. Count 11 (page 22): No comment.

25. Count 11(3): The interpreter's version in English of the answer is not as complete as Mr. Kamiyama's answer in Japanese.

The interpreter's English version of the answer presumes that the entire sum of money under discussion was put in Rev. Moon's name. Mr. Kamiyama's answer in Japanese does not permit such presumption because it specifies that some of the money was retained in the form of cash. This cash fund was designed for emergency expenses. The interpreter's English version of the answer implies that the money placed in Rev. Moon's account would be used for emergency expenses. The fact that some of the money was put in Rev. Moon's name and some was retained in a cash form was previously established in Count 11 (page 21). The interpreter's English version of the answer to Count 11(3) implies a contradiction with the interpreter's English version of the answer in Count 11 (page 21).

26. Count 12 (page 24): No comment.

27. Count 12(1): No comment.

28. Count 12(2): The prosecutor's question focuses on telling Rev. Moon about "buying additional stock in Tong Il at that time". The interpreter's version of the question in Japanese talks about the "intention of buying additional stock again later on". The prosecutor's question and the interpreter's version of the same question in Japanese differ as to both the action involved and the time frame of the action. The former question presumes that Mr. Kamiyama was buying additional Tong Il stock at a particular time. The latter question presumes that Mr. Kamiayama had the intention of buying additional stock at some later time. Moreover, the prosecutor's question specifies that the stock involved is stock in Tong Il whereas the interpreter's version of the question suggests that stock in any company could be involved.

29. Count 12(3): No comment.

30. Count 12(4): Compared to the English language question, the interpreter's version of the prosecutor's question is disjointed and imprecise. In no way does the interpreter's version of the prosecutor's question specifically refer to Tong Il stock.

31. Count 12(5): No comment.

32. Count 13(1): The prosecutor's question is much simpler than the interpreter's version of the question in Japanese. The object of the prosecutor's question is to find out if Mr. Kamiyama instructed Michael Warder to concoct a story for government investigators. The story presumes that Mr. Warder purchased $5,000 of Tong Il stock. The purportedly fabricated part of the story is that Mr. Warder obtained the money for this purchase from relatives and friends. The interpreter's version of the question in Japanese is much more complex. It begins with a condition, namely, if a government inquiry is made. From there it moves to the presumption that Mr. Warder had received $5,000 from friends and relatives and with this money he bought stock. Departing from the prosecutor's question, the interpreter's version of the question is ambiguous as to what is apparently fabricated. Furthermore, the original question contains a second question, which no where appears in the interpreter's version in Japanese.

33. Count 13(2): The interpreter's version of the question is much less precise than the prosecutor's question. The prosecutor's question very specifically focuses on a false statement about how much Mike Warder "paid for his stock in Tong Il". The interpreter's version focuses on "a false statement concerning that", which refers to "the particulars of Mike Warder's purchase of Tong Il stock". The particulars of the stock purchase can obviously encompass much more than the method of payment.

34. Count 1(1): The interpreter's version of the question in Japanese is disjointed and omits reference to Tong Il when discussing the thousand shares of stock.

35. Count 1(2): The interpreter's version of the prosecutor's question inaccurately interprets the prosecutor's question. It seems to presume that Mr. Kamiyama understood the English language question.

36. Count 1(3): The interpreter's version of the prosecutor's question is ambiguous and does not accurately interpret the question. The prosecutor's question is looking for

reasons "other than investment in Tong Il". The interpreter's version of the question is looking for "some other, some more reasons". The interpreter's version of the question does not explain what these reasons are in addition to.

37. Count 1(4): The prosecutor's question asks about immigration problems in general. The interpreter's version is a misinterpretation limiting this concept of immigration problems to "entry into the country or about visa matters". Immigration problems can obviously include other things.

38. Count 1 (page 36): No comment.

39. Count 1(5): No comment.

40. Count 1(6): No comment.

Regarding the matter of the Administration of the Oath to Mr. Kamiyama, advising him with respect to perjury and advising him of his Fifth Amendment rights, I have attached hereto and incorporate by reference herein Exhibit C which contain passages of the indictment transcript pertaining to these matters.

41. July 9, 1981 Administration of Oath: The Grand Jury Foreman uses the words "solemnly swear" while such words are omitted in the interpreter's version of the oath administration.

42. July 9, 1981 Advisement of Rights: The interpreter's version of the informing of Mr. Kamiyama of his right against self-incrimination is phrased "you can refuse (to give) answers to questions such as would cause you to fall into sin". Interpreter used an erroneous verb form altering the phrase meaning "incrimination" to one used to convey a religious notion.

43. July 9, 1981 Advisement as to Perjury: The foreman states that Mr. Kamiyama could be charged with perjury if he gives false testimony. The interpreter's version of the advisement fails to use the word "perjury" in indicating that criminal prosecution is possible for false or negligent testimony. It appears from the record that he did not know the term "perjury".

44. July 16, 1981 Administration of Oath: Again, the interpreter's version of the administration of oath omits the words "solemnly swear".

45. July 16, 1981 Advisement of Fifth Amendment Rights: The interpreter's version of the Fifth Amendment rights is imprecise using the words "fifth article's . . . er . . . revised clause". There is no specific reference to nor an explanation of the Fifth Amendment itself.

46. July 21, 1981 Administration of Oath: Again the interpreter's version of the administration of oath omits the words "solemnly swear."

I swear that the foregoing is true and correct. Executed on 7/5/85.

Toshio George Tsukahira

DISTRICT OF COLUMBIA

Subscribed and sworn before me

Notary Public

My Commission Expires: 8/14/89

EXHIBIT-A

Toshio George Tsukahira
6505 Pyle Road
Bethesda, MD 20817
301-320-3978

International Affairs Consultant
and Japan Specialist

## CURRICULUM VITAE

Birthplace:

Los Angeles, California, U.S.A.

Education

| | | |
|---|---|---|
| Ph.D. | (1951) | Harvard University, Cambridge, Massachusetts<br>Majors: History and Far Eastern Languages |
| M.A. | (1941) | University of California, Los Angeles, California<br>Major: History |
| B.A. | (1939) | University of California, Los Angeles, California<br>Majors: History and Political Science |

A.A. (1936) Meiji University, Tokyo, Japan
Major: Commerce

Major Professional Activities

As an independent consultant and Japan specialist since 1976:

--Organized program for seven members of the Japanese parliament visiting Washington under the sponsorship of the Asia Foundation to discuss current issues with U.S. congressional and executive branch leaders (March, 1985);

--Testified on problems of Japanese to English translation at a Congressional hearing on the availability of Japanese scientific literature in the United States held by the House Subcommittee on Science, Research and Technology (May, 1984);

--Conducted research in Japanese language materials for projects on the Japanese semi-conductor industry and Japanese government policies related to high technology development conducted by a Washington law firm, Verner, Liipfert, et. al. (1981-1984);

--Organized and chaired two 44-week Advanced Area Studies courses for Japanese language officers at the Foreign Service Institute of the State Department (academic years 1980-81 and 1981-82);

--As a court-appointed referee, reviewed and submitted judgements on the accuracy of translations of Japanese documents as rendered by translators for both Zenith Radio Corporation (plaintiff) and Matsushita Electric Industrial Co., Ltd, et. al. (defendants) in pretrial hearings before the U. S. District Court, Eastern District of Pennsylvania (February 1979 - April 1980);

--Conducted survey in Japan commissioned by the U.S. Information Agency on Japanese external communications programs and prepared a report on Japan-related communications research activities in the United States (October-November 1978);

--prepared a study commissioned by the State Department on structural impediments in U.S.-Japan cultural and educational programs for consideration at the 1977 and 1978 meetings of the U.S.-Japan Conference on Educational and Cultural Exchange (CULCON)

As a U.S. Foreign Service Officer serving in Japan (1962-68,1972-75):

--Supervised language services at the American Embassy in Tokyo (1962-63);

--Analyzed and reported on Japanese labor, politics and international relations as Assistant Labor Attache and political officer at the American Embassy, Tokyo (1964-66);

--Supervised work of American Consulate in Fukuoka, Japan, as Principal Officer (1966-68);

--Analyzed and reported on Japanese government policies and activities as Deputy Political Counselor, American Embassy, Tokyo (1972-75)

Publications

"Foreign Relations" chapter in Japan: A Country Study. Washington, D.C.: Foreign Area Studies, American University, 1982.

Feudal Control in Tokugawa Japan: The Sankin Kotai System. Cambridge: Harvard University Press, 1966.

Postwar Development of Japanese Communist Strategy. Cambridge: Center for International Studies, Massachusetts Institute of Technology, 1954.

## EMPLOYMENT CHRONOLOGY

Jan 1976 to present: Consultant and lecturer on Japanese affairs

Clients: The Asia Foundation, U.S. Department of State; U.S. Information Agency; Business Council for International Understanding; U.S. District Court of Eastern Pennsylvania; University of Maryland; American University; Johns Hopkins School of Advanced Internanational Studies, Princeton University; and various private business firms and law offices.

Jan 1960 - Dec 1975: Foreign Service Officer, U.S. Department of State

Positions held: Special Assistant to the Director, Office of Research and Analysis for East Asia and Pacific (Mar-Dec 1975); Deputy Political Counselor, American Embassy, Tokyo, Japan (Jan 1972-Feb 1975); Deputy Political-Military Counselor, American Embassy, Bangkok, Thailand (Dec 1968-Dec 1971); Principal Officer, American Consulate, Fukuoka, Japan (Aug 1966-Nov 1968); Information Officer/Assistant Labor Attache/Political Officer, American Embassy, Tokyo, Japan (Jan 1962-Jul 1966).

Oct 1955 - Dec 1961: Research Analyst, Office of Intelligence Research, Department of State, Washington, D.C.

Sep 1954 - Sep 1955: Assistant Professor of History, University of California, Berkeley, California

Jul 1951 - Sep 1954: Instructor in History, Harvard University, Cambridge, Massachusetts

Sep 1947 - Jun 1951: Graduate student (Ph.D. candidate), Harvard University Cambridge, Massachusetts

Dec 1946 - Sep 1947: Intelligence Officer GS-12, U.S.Government, Washington, D.C.

Jun 1944 - Dec 1946: Military Service, U.S. Army (Private to Captain) Served 6 months in Occupied Japan.

Feb 1942 - Jun 1944: Instructor in Japanese, Military Intelligence Language School, U.S. War Department

Sep 1939 - Feb 1942: Teaching Fellow, History Dept., University of California, Los Angeles, California

EXHIBIT - B

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 9 - - - (1)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Did Reverend Moon know he owned stock in Tong Il, that stock was in his name in Tong Il? | I doubt it, because I took it up by myself, and did all what I had to do. So, I don't think he knew it. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| So, at (or in) Tong Il, that is,... er...did (he) know that there are stocks in the Reverend's name, under his title? | I don't think he knows. Because I decided things and I did (them). |
| Comments on Question | Comments on Answer |
| 1. The wording of Q' strongly suggests that the question refers to stocks located in Tong Il.<br>2. Q' does not ask specifically about the ownership of the stock. | 1. A' has the verb "to know" in the present tense; A renders it in the past tense. |

[REDACTED] INDICTMENT S81 Cr. 705 ,[GLG]

COUNT 9 - - - (2)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Did you tell Reverend Moon that you had issued $50,000 worth of stock in his name? | No, I never mentioned it. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| So then...er...have you ever spoken about there being stocks worth five hundred...er...fifty thousand dollars in the Reverend's name? | No. |
| Comments on Question | Comments on Answer |
| 1. Q' refers to the existence of stocks and not to whether Mr. Kamiyama issued them.<br>2. Q' does not ask specifically to whom Mr. Kamiyama spoke. | 1. A elaborates on the simple negative answer in A'. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 9 - - - (3)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Never discussed it with him? | No. It was like my simply borrowing his name, and I did execute it. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| About that...er...you absolutely never had consultations on the matter, right? | No, because I, borrowing his name, decided and did (things) myself. |
| Comments on Question | Comments on Answer |
| 1. Q' does not ask specifically with whom Mr. Kamiyama had consultations. | 1. The words "simply" and "like" used in A are not in Mr. Kamiyama's response. |
|  | 2. The word "execute" used in A is not in Mr. Kamiyama's response. He is not saying that he is carrying out someone's orders in A'. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 9 - - - (4)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Did Reverend Moon sign any documents in connection with his ownership of stock in Tong Il? | No, there was no such occasion. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| So then...er...concerning the ownership of stock certificates, the ownership of stock...er... were there not occasions such as when the Reverend had to sign, on documents? | No. |
| Comments on Question | Comments on Answer |
| 1. The "had to sign" in Q' is gratuitous; the question becomes whether or not Reverend Moon had an obligation to sign documents. | 1. Mr. Kamiyama's answer in A' negates such facts as the fact that Reverend Moon "had to sign;" it does not negate the fact that Reverend Moon signed the documents. |
| 2. The question in Q' is negative, while the question in Q is affirmative. Q' implies there were occasions, while Q does not. | |
| 3. The ownership of the stock referred to, and whether this is Tong Il stock is not made clear in Q'. | |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 9 - - - (5)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | And you never talked to him about it? | | That is correct, and nothing of the specific day-to-day office work. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Then...er...in any event, you did not talk to the Reverend about that matter. | | I did not talk (to him). I have not talked (to him) at all about practical business matters. |
| | Comments on Question | | Comments on Answer |
| 1. | The phrase "about that matter" in Q' can be assumed to refer to Reverend Moon's "having to sign something," and thus that Mr. Kamiyama is being asked whether he talked about this. | 1. | The interpreter's answer in A contains the word "and." This implies that Mr. Kamiyama did not talk to Reverend Moon about the ownership of stock, nor did he, moreover, talk to him about practical business matters. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 10 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Did Reverend Moon carry the checkbook with him? | | He doesn't, because I managed it. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...as for Reverend Moon...the checkbook...is he carrying this together with (him or you)? | | Ye-...er....no...I'm sorry...because I had charge of it. |
| | Comments on Question | | Comments on Answer |
| 1. | There is a confusion of tenses in Q': Where Q asks "did...carry?", Q' asks the question in the present progressive tense. | 1. | Mr. Kamiyama's "I'm sorry" (barely audible) appears to be an apology following a correction from a partially enunciated "yes" to a "no." |
| 2. | The word "issho ni" used in Q' to modify the verb "carrying" is confusing since it may mean joint activity together with another person, or something together with another thing. | 2. | What is rendered as "managed" in A, means that one was in charge of something, and does not necessarily mean that one was in physical possession of it. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 10 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | You carried the checkbook with you from the very beginning of the account? | | Yes, I kept it myself from the beginning. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | So then, from the very beginning--that's after opening the account--from the beginning, (you) Mr. Kamiyama [verb missing] the checkbook... [sentence unfinished] | | As for that, I kept it [English word "keep" in Japanized form is used]. |
| | Comments on Question | | Comments on Answer |
| 1. | The interpreter did not finish his rendering of the question asked in Q. | 1. | Mr. Kamiyama says nothing that can be translated as "Yes," "from the beginning," or "myself." These words make A appear to be a response to Q. |
| | | 2. | Mr. Kamiyama begins his answer without hearing the missing verb in Q'; so it is not clear whether or not he is responding to the "you carried" in Q. |
| | | 3. | The Japanized English word "keep" used in A' does not necessarily imply physical possession. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 10 - - - (3)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | And did Reverend Moon write out the other portions of the check, other than his signature. |  | No. No, he didn't do it. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | So then...er...were there ever occasions when the Reverend personally would write, in addition to (his) signature, the amount and various other places? |  | There were not.  There were not. |
|  | Comments on Question |  | Comments on Answer |
|  | No comments. |  | No comments. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 10 - - - (4)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | You prepared all the checks for him? | | That's correct. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | What you are saying...are you saying that (you or someone), in order to be able to have the Reverend sign, wrote in beforehand all the other places, and then requested the signature? | | Yes. |
| | Comments on Question | | Comments on Answer |
| 1. | It is never explicitly made clear in Q' whether the question is about Mr. Kamiyama's actions or someone else's. | | No comments. |
| 2. | Q' does not ask "all the checks" but "all the other places." It does not, therefore, correspond to Q. | | |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 10 - - - (5)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature? |  | He never wrote anything other than his own signature as far as I remember. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | Er...about the Chase Manhattan...er...checks, has (someone) ever, at any time or anywhere, written on them, in places other than (where) the Reverend has signed, anything like the date or something? |  | I don't quite understand the question. |
|  | [Question repeated by interpreter] |  |  |
|  | What about the Reverend Moon personally writing in various things other than the signature? |  | The Reverend has never written anything other than the signature, as far as I know. |
|  | Comments on Question |  | Comments on Answer |
| 1. | The original question in Q' was so vague that it had to be repeated; the repetition is not part of the indictment. | 1. | Mr. Kamiyama qualifies his answer in A' with "as far as I know." |
|  |  | 2. | Mr. Kamiyama is responsible for answering only the repetition, not the original version, since he said he did not understand that. |

[REDACTED] INDICTMENT S81 Cr. 705 ·[GLG]

COUNT 10 - - - (6)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | So, to your knowledge, he never wrote anything but the signature; is that correct? |  | To the best of my knowledge, Reverend never affixed anything other than the signature in the book, in the check. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | What you are saying is, as far as you know, Reverend Moon has never written anything other than the signature on the check.... |  | Yes, as far as I know, he has never done anything other than sign. |
|  | Comments on Question |  | Comments on Answer |
| 1. | Both Q and Q' contain a qualifying expression that commits Mr. Kamiyama only to his recognizedly limited knowledge of the truth. | 1. | Both A and A' also contain the qualification. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLC]

COUNT 11- - - (1)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| And where did you get the money, that four hundred thousand dollars, to deposit (in Reverend Moon's account)? | From family fund. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| And about this...that four hundred thousand dollars...er...where was its source? | Family fund(s). |
| Comments on Question | Comments on Answer |
| 1. There is no audible reference to "Reverend Moon's account" in the tape record of the hearing.<br>2. Whereas Q asks where Mr. Kamiyama acquired the money to deposit, Q' asks only the source and omits the reference to the purpose. | 1. Japanese does not distinguish between singular and plural or between definite and indefinite. Therefore, Mr. Kamiyama's response "famirii fando" could mean: a) a family fund<br>b) family funds<br>c) the Family Fund<br>d) the Family Funds<br>Thus, Mr. Kamiyama's usage in A' does not unambiguously suggest a specific Family Fund. |

COUNT 11 - - - (2)

| QUESTION | | ANSWER | |
|---|---|---|---|
| Q | Prosecutor's Question<br>Well, where did the four hundred thousand dollars -- how did you get the four hundred thousand dollars that you deposited into Moon's account. | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer<br>Over the years, our brethren from Japan, who came to USA, they contribute, and it was accumulated.<br>I remember that there are at least about seven hundred brethren coming to the USA. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama<br>And this four hundred thousand dollars ...in short, as for the source, where where did it come from? | A' | Mr. Kamiyama's Answer as Correctly Translated<br>Er...the fun -- fun(d?)...er...Japanese brethren, you see...Japanese members, you see, quite a number came to America. Those people continuously collected and collected the money which came, and...er...that went into the account.<br>I remember that about seven hundred persons came. |
| | Comments on Question<br>1. Q asks "how did you get" the money, while Q' asks for its "source." | | Comments on Answer<br>1. Mr. Kamiyama's answer in A' is not a direct response to Q'. The expression "money which came" does not specify where the money came from. There is no connection between this statement and the immediately prior statement in A' about members coming from Japan.<br>2. A says the "brethren from Japan" contributed the money; whereas Mr. Kamiyama only states in A' that they "collected" it. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 11 - - - (3)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Why did you use Reverend Moon's name for the family fund? | As the money came from overseas, and part of the money may become necessary as expenses to take care of the brethren, we put it in Reverend Moon's name, who legitimately represents International Unification Church. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| Then...why did you borrow Reverend Moon's name for the family fund? | As for that, you see...that is money that came from Japan, this foreign country. (And) that is the account in the name of Reverend Moon, who represents the International Unification Church, you see. The reason we put (the money) there was that it came from a foreign country, you see. (So) when the foreign brethren came, we put a portion there. One portion, I had them keep in cash (so that) should a financial need arise, it would be paid from there. |
| Comments on Question | Comments on Answer |
| No comments. | 1. A' is not a direct answer to Q', which asks why Reverend Moon's name was "borrowed" for the family fund.<br>2. A mistakenly implies that the account "in Reverend Moon's name" is equivalent to the family fund under discussion. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 12 - - - (1)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | And you got that hundred thousand dollars from the family fund? |  | Correct. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | That hundred thousand dollars you obtained from the family fund, is that right? |  | That is correct. |
|  | Comments on Question |  | Comments on Answer |
|  | No comments. |  | No comments. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 12 - - - (2)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Did you tell Reverend Moon that you were buying additional stock in Tong Il at that time? | No, I didn't. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| And around that time, did you tell Reverend Moon that you had the intention of buying additional stock again later on? | I did not tell him. |
| Comments on Question | Comments on Answer |
| 1. Q' asks if Mr. Kamiyama told Reverend Moon that he had the intention of buying stock rather than that he was buying stock, as in Q.<br>2. There is no specific reference to Tong Il in Q' as there is in Q.<br>3. The expression "at that time" in Q is ambiguous, since it can refer to the time of telling Reverend Moon or the time of the buying of stock. | No comments. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 12 - - - (3)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | Did you discuss with him the reason why you were buying stock in Tong Il? |  | I don't dare consult with him on such matters. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | Er...did you speak with the Reverend about anything (concerning) the reason for buying stock in Tong Il? |  | [As if to himself] How many times are they asking this?<br>[In a louder voice] I don't consult (with him) about such matters. |
|  | Comments on Question |  | Comments on Answer |
|  | 1. It is not clear in Q' who is doing the buying: Q says "the reason why you were buying" and Q' says "the reason for buying." |  | 1. A' does not provide a yes-no answer to a question that requires one. Therefore, A' is not a direct response to Q'.<br>2. The rendering "don't dare consult" in A is erroneous. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 12 - - - (4)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | Did you ask him if it was proper for you to own more stock in Tong Il than Reverend Moon? |  | No, I didn't talk with him about it. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | So then, er...about such things as your holding more than a proportionate share...(relative to) what may be called the stock share of Reverend Moon, that is..., your owning more shares than the Reverend -- haven't you ever talked (with him) concerning the propriety and such of that? |  | No, I haven't. |
|  | Comments on Question |  | Comments on Answer |
|  | 1. It is not clear in Q' whether stock in Tong Il or stock in general is being referred to. |  | No comments. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 12 - - - (5)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Did you have any conversations with anyone as to whether or not it was proper for you to own more shares of stock in Tong Il than Reverend Moon? | | I didn't even think about it a bit. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...regarding Tong Il stock...have you ever talked with someone, with anyone about whether or not your holding a greater number of shares than the Reverend is proper? | | I am not even thinking of such a thing. |
| | Comments on Question | | Comments on Answer |
| | No comments. | 1. | A' is not a direct response to Q' because there is neither "yes" or "no" in the answer. |
| | | 2. | The answer as given in A differs in tense from Mr. Kamiyama's answer in A'. |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 13 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Did you ever tell Michael Warder to tell government investigators that he got $5,000 to purchase stock in Tong Il from relatives or friends? Did you ever tell him to give that explanation to anyone? | | I didn't do it. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...to Mike Warder, that is...have you ever said that he should declare -- if government...er...inquiries or something came in, that is--that five thousand dollars was received from relatives or such, from friends or such, and that with that money...er ...it was decided to buy stock? | | I have not. |
| | Comments on Question | | Comments on Answer |
| 1. | Q' is so vague that it is not possible to determine unambiguously who received $5,000, who decided to buy stock, who bought stock, and what stock was bought. | 1. | Mr. Kamiyama's answer in A' responds only to the first half of Q. |
| 2. | The reference to "government investigators" in Q is awkwardly and confusingly translated in Q'. | | |
| 3. | The second part of Q is not covered in Q'. | | |

[REDACTED] INDICTMENT S81 Cr. 705 [GLG]

COUNT 13 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Did you ever tell Michael Warder to give a false explanation as to how he paid for his stock in Tong Il? | | No, I didn't. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...with regard to the particulars of Mike Warder's purchase of Tong Il stock...have you ever told Warder to make a false statement concerning them? | | I have not. |
| | Comments on Question | | Comments on Answer |
| 1. | Q is unclear as to what is meant by "how he paid for his stock," while Q' is even more ambiguous, rendering that phrase "the particulars of... purchase." | | No comments. |

[REDACTED] INDICTMENT 82 Cr. 194 [GLG]

COUNT 1 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Tell the Grand Jury why you bought a thousand shares...a thousand shares of Tong Il in January 1974. | | There was a dire need for the Unification Church to grow...for the expansion, and we needed it.<br>Is there anything wrong with it? |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...to this Grand Jury, I would like to have you tell it from your own mouth, but in January 1974 you bought one thousand shares, right? And then,...[Interpreter to Prosecutor: Uh, did you ask why? Prosecutor: Tell the Grand Jury why you bought it.]...why you bought... | | As for that, in order for Unification Industry to grow in future, money was needed, you see? [Breaking into the interpretation] Since it is necessary to bring about development, that money.... [words unclear]....<br>Would there be something improper about that? |
| | Comments on Question | | Comments on Answer |
| 1 | Q asks why Mr. Kamiyama bought stock in Tong Il, but Q' does not mention Tong Il. | 1. | Mr. Kamiyama's answer in A' is interrupted and is incomplete. |
| | | 2. | A' does not directly answer the question why the stock was bought and offers only the general statement that money is needed for development. |
| | | 3. | A refers to Unification Church instead of Unification Industry mentioned in A'. |

[REDACTED] INDICTMENT 82 Cr. 194 [GLG]

COUNT 1 - - - (2)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Did he say Unification Church or Tong Il? | I repeat, for the expansion of Tong Il Enterprise, we thought it's necessary that this had to be taken care of. And I might make one explanation. That is: Tong Il Enterprise. It's called in Japanese, "toitsu," which means "unification." So, in three languages, phonetically, there are three different names, but representing the same thing, one in Korean, one in Japanese, one in English. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| Er...did you say for the expansion of the Church? | As for the "to...toitsu" just mentioned, ...Kor...I..."Toitsu," when you say it in English, is "unification." When you say "tong il""...er...when you say it in Korean, it's "tong il," you see. When you say it in Japanese, it's "toitsu." So, the name of the company is "Tong Il Enterprise." And so, because it was necessary to expand the business in the future for the sake of the development of Tong Il Enterprise, (I) put (the money) in there. |
| Comments on Question | Comments on Answer |
| 1. Q' does not mention Tong Il and elaborates on the question asked in Q. | 1. Mr. Kamiyama in A' attempts to clarify terminology, but also addresses the question of "why," which was not asked here. |

## [REDACTED] INDICTMENT 82 Cr. 194 [GLG]

### COUNT 1 - - - (3)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| As you sit here today, do you recall any other reasons other than investment in Tong Il? | At any rate, I still insist that...uh... for the sake of development, I did so, and can't remember any other. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| So then...now, here...you are, well, appearing in court, but...er...can you not recall that there were some other, some more reasons? | At any rate, [word unclear] is that I put it in for the sake of development. |
| Comments on Question | Comments on Answer |
| 1. Q asks about reasons "other than investment in Tong Il," while Q' does not specify Tong Il. | 1. Mr. Kamiyama's answer at A' does not respond directly to Q'. The "at any rate" disposes of the issue of alternative reasons as relatively unimportant. |
| 2. Q is affirmative and, therefore, neutral, while Q' asks in the negative, suggesting that there were other reasons. | 2. A contains the words "still insist" and "can't remember any other," while A' has nothing corresponding to that. |

[REDACTED] INDICTMENT 82 Cr. 194 [GLG]

COUNT 1 - - - (4)

| QUESTION | ANSWER |
|---|---|
| Q Prosecutor's Question | A Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Were you having any immigration problems at the time? | I didn't experience problems with them. |
| Q' Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' Mr. Kamiyama's Answer as Correctly Translated |
| Er...at that time, did you...er... have any kind of dispute with the Immigration Office? | 197--...What does this mean? What is meant by "immigration?" |
| Er...with the Immigration Office, problems concerning entry into the country, visa matters, and the like. | I did not have. |
| Comments on Question | Comments on Answer |
| 1. Q' uses a word meaning "dispute" or "trouble," which is slightly misleading. | No comments. |

[REDACTED] INDICTMENT 82 Cr. 194 [GLG]

COUNT 1 - - - (5)

| | QUESTION | | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| | Did you make your investment in Tong Il in part for the purpose of obtaining the right to stay in the country for a longer period of time? | | I want you to know, sir, that I did that investment for -- purely for -- expansion of the Tong Il Enterprise. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
| | Er...you invested in Tong Il, but did you do this so as to be able -- out of a desire to stay longer legally in this country, even though this was not the whole purpose. | | As I said before, it was for the development of Tong Il Enterprise that I made the investment. I want you to know that. |
| | Comments on Question | | Comments on Answer |
| 1. | Q' uses the term "legally," which is not in Q, although the Prosecutor's question implies that, without the investment, Mr. Kamiyama's right to stay in the United States legally might terminate. | 1. | Mr. Kamiyama's answer in A' does not directly answer the question in Q', which calls for a "yes" or "no." |

[REDACTED] INDICTMENT 82 Cr. 194 [GLG]

COUNT 1 - - - (6)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
| Q | Prosecutor's Question | A | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
|  | And your visa and immigration matters didn't enter into that at all. Is that correct? |  | I took that step purely for the expansion of Tong Il Enterprise. |
| Q' | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | A' | Mr. Kamiyama's Answer as Correctly Translated |
|  | Then, can you say that in your motive, there was complete indifference...er...there was nothing to do with such matters as visa problems, immigration problems and such? |  | I put (the money) in for the development of Unification Industry...er...Tong Il Enterprise. |
|  | Comments on Question |  | Comments on Answer |
|  | No comments. | 1. | A' does not answer "yes" or "no" to the question in Q'. |
|  |  | 2. | The word " purely" in A does not appear in A'. |

EXHIBIT C

## RECORD OF THE PROCEEDINGS AT THE BEGINNINGS OF GRAND JURY SESSIONS ON JULY 9, 16, AND 21, 1981

### July 9, 1981 -- First Session

FORELADY: Do you solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it, shall be the truth, the whole truth, and nothing but the truth, so help you God?

INTERPRETER [in Japanese]: Regarding this present case, we would like, here, to have you convey to us all of the truth, er...(and) only the truth.

WITNESS [in Japanese and English]: Yes.

INTERPRETER [in English]: Yes.

PROSECUTOR: And in connection with your appearing before this Grand Jury you are entitled to certain rights. Let me explain to you what these rights are. First, you may refuse to answer any question, if a truthful answer to that question would tend to incriminate you personally, in any way, shape or form. Do you understand that?

INTERPRETER [in Japanese]: And, er...in connection with your appearance in court today in accordance with a summons, there are several rights that are granted you. I will explain them to you. The first of these is, you can refuse (to give) answers to questions such as would cause you to fall into sin. Were you able to comprehend this?

WITNESS [in English]: Yes.

INTERPRETER [in English]: Yes.

PROSECUTOR: Second, anything you do say here today could be used against you, not only by this Grand Jury but in the court of law. Do you understand that?

INTERPRETER [in Japanese]: And, regarding the statements you will make here today, there is the possibility that they will not be in your interest, that they will be disadvantageous to you. Could I solicit your understanding of this?

WITNESS [in Japanese]: What did he say?

INTERPRETER [in English]: He wants repetition.

PROSECUTOR: You should be aware, that anything you do say in front of this Grand Jury can be used against you. Not only by this Grand Jury, but in any court proceeding. Do you understand?

INTERPRETER [in Japanese]: The statements you make today, at this Grand Jury, well...there may be occasions when they will be used to your disadvantage, and in addition...er...even in legal -- subsequent ones, that is -- proceedings, even in those that will continue hereafter...there is the possibility that they may be used to your disadvantage.

PROSECUTOR: Do you understand this?

INTERPRETER [in Japanese]: Is that matter clear? Do you not understand?

WITNESS [in Japanese]: Yes, I understand.

PROSECUTOR: Also in connection with your appearance, you are entitled to consult with your attorney. Although the attorney cannot be in the Grand Jury with you, he or she could be outside the Grand Jury room and you could ask to excuse yourself from time to time. You understand that?

INTERPRETER [in Japanese]: And, in connection with your appearance in court today, consulting with your attorney exists as a right. And, although your attorney will not come into the Grand Jury, if necessary, you can leave your seat from time to time and consult.

PROSECUTOR: Am I correct that your attorney is outside the Grand Jury room? And his name is Andrew Lawler?

INTERPRETER [in Japanese]: And, er...it is certain that your attorney is outside here, is it not? Is your attorney's name Andrew Lawler?

WITNESS [in Japanese]: Yes.

INTERPRETER [in English]: Yes.

PROSECUTOR: Finally, you should be aware that this Grand Jury is specifically looking into your conduct in connection with various violations of federal criminal law relating to tax matters.

INTERPRETER [in Japanese]: And, at this Grand Jury, it has assembled to investigate whether you (committed) a number of illegal acts concerning federal government taxes. Do you understand this?

WITNESS [in Japanese]: In regard to me, personally?

INTERPRETER [in English]: Does that, does that pertain to me in person...personally?

PROSECUTOR: Yes, specifically pertaining to your conduct in connection with possible violations of federal criminal law. Do you understand that?

INTERPRETER [in Japanese]: That...er...means your personal...er taxes. Do you understand my meaning?

WITNESS [in Japanese]: Does this mean that I evaded taxes or something like that?

INTERPRETER [in English]: Does that mean that you are saying something like I have violated tax laws?

PROSECUTOR: No, all I'm saying, Mr. Kamiyama, is that the Grand Jury is investigating whether or not you personally may have violated the tax laws. You understand that?

INTERPRETER [in Japanese]: Er, the meaning of what I said to you is that this Grand Jury is to investigate whether or not you have committed violations of the tax laws. Is that clear?

WITNESS [in Japanese]: Violations of the tax laws, right?

INTERPRETER [in English]: Once again, does that pertain to my possible violation of the tax laws?

PROSECUTOR: Our looking into your possible violation. Yes.

INTERPRETER [in Japanese]: That is the meaning. Whether or not you...at the present time, by any chance...with respect to the tax laws, that is...whether there might have been law violations. The Grand Jury is investigating that.

PROSECUTOR: Do you understand that?

INTERPRETER [in Japanese]: As for that....

WITNESS [in Japanese]: Yes, I understand.

INTERPRETER [in English]: Yes, it is clear.

PROSECUTOR: Finally, Mr Kamiyama, if you should give a false answer or fail to testify completely and truthfully in response to the question that I ask you, you could be charged with a separate criminal violation for perjury or obstruction of justice. Do you understand that?

INTERPRETER [in Japanese]: And now, in today's questions and answers, er...if there are instances of false answers or failure to testify, there is the possibility that you may be charged... separately, that is...under criminal law.

WITNESS [in Japanese]: Does that mean, not the tax laws, but...?

INTERPRETER [in English]: Does that mean that on top of, or apart from the tax laws?

PROSECUTOR: That's correct. If you should testify falsely...

INTERPRETER [in Japanese]: Er, er....

WITNESS [in Japanese]: That means...?

INTERPRETER [in Japanese]: Testimony...if (you) distorted the testimony...

WITNESS [in Japanese]: That means...that means I'll be charged with perjury, doesn't it?

INTERPRETER [in English]: Does that mean, once again, that I shall be charged for.... Er...I'm trying to find the right word...

PROSECUTOR [whispering]: Perjury...

INTERPRETER [continuing in English]: Ah...all right, fraudulent answers, or fraudulent...well, negligence of...er... testimony, or...

PROSECUTOR: If you should knowingly and willfully give a false answer to the Grand Jury, that is a separate crime.

INTERPRETER [in Japanese]: Er...While knowing it, that is...er matters that amount to crimes. That is the meaning.

PROSECUTOR: Do you understand that?

INTERPRETER [in Japanese]: Is that clear?

WITNESS [in Japanese]: Yes, I understand.

INTERPRETER: (Not heard on the tape)

July 9, 1981 -- Second Session

PROSECUTOR: (First part not on tape)....under oath?

FORELADY: The witness is still under oath.

INTERPRETER [in Japanese]: The earlier oath is even now, er...in effect...the oath you took earlier, that is.

WITNESS [in Japanese]: I see.

INTERPRETER: (Not heard on the tape)

Comment:

1. No perjury warning nor explanation of the Fifth Amendment is provided by the Prosecutor at this session,

July 9, 1981 -- Third Session

PROSECUTOR: Mr. Kamiyama, you are still under oath.

INTERPRETER [in Japanese]: Er...the earlier oath...it's still in effect, so....

WITNESS [in Japanese]: Yes.

INTERPRETER [in English]: Yes.

Comment:

1. No perjury warning nor explanation of the Fifth Amendment is provided.

July 9, 1981 -- Fourth Session

PROSECUTOR: Would you remind the witness he's under oath?

FORELADY: Still under oath, Sir.

INTERPRETER [in Japanese]: Er...the declaration [sic] of a while ago is still in effect.

WITNESS [in English]: Yes.

Comment:

1. No perjury warning nor explanation of the Fifth Amendment is provided.

2. Interpreter uses the word meaning "declaration" instead of the proper word for "oath."

## July 16, 1981 -- First Session

FORELADY: You do solemnly swear that the testimony you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God.

INTERPRETER [in Japanese]: At this time, before the Grand Jury, with respect to the various statements we will have you, as a witness [word for "reference person"is used], make, we would like to have you convey entirely only the truth.

WITNESS: (Not heard on tape)

INTERPRETER [in English]: Ye(s)...

PROSECUTOR: I advised you of your rights last week before the Grand Jury, and I am not going to repeat them at this time except to advise you that if you answer any question that I put to you falsely, you should be aware that that is a separate federal crime. It has nothing whatsoever to do with ... ...and you can be prosecuted separately for that crime. You understand that?

INTERPRETER [in Japanese]: Since I explained to you your civil rights last time, I will not do it over again. However, were there to be a false answer or statement in (your) testimony, this could become a charge against you even outside this present case. So, well... please take note.

PROSECUTOR: Am I correct that your attorney is outside the Grand Jury room?

INTERPRETER [in Japanese]: Er, it is certain that (your) attorney is outside, is it not?

WITNESS [in Japanese]: Yes, I understand [sic].

INTERPRETER [in English]: That is correct.

WITNESS [in Japanese]: My lawyer told me it would be better if I made this statement.

INTERPRETER [in English]: My attorney counseled me to read this out.

WITNESS [in Japanese]: I have come prepared for answering questions concerning the content of the affidavit I submitted to the Department of Justice the other day. Nevertheless, since I am the person who is the subject of this current investigation, it is my intention to maintain my rights which are guaranteed by the Constitution.

INTERPRETER [in English]: I am prepared to answer questions dealing with information contained in the affidavit which I submitted to the Department of Justice. However, since I am a target of this investigation, I wish to reserve the right to claim my constitutional privileges with respect to other questions.

PROSECUTOR: At any time, Mr. Kamiyama, that I ask you a question and you want to invoke your Fifth Amendment privileges, please feel free to do so, if you like.

INTERPRETER [in Japanese]: And, er...even when I am asking you questions, you see, well...you are protected by the fifth article's...er...revised clause. So your use of it is your right.

WITNESS [in Japanese]: Yes, I understand.

INTERPRETER [in English]: Yes, it's clear.

Comment:

1. The interpreter's rendering of the oath is a polite request and not a proper oath. The gratuitously used word for "witness," sankoonin, which means "reference person," is not correct.

2. Interpreter's rendering of the statement read by the witness distorts its meaning by making a distinction between "questions dealing with information contained in the affidavit" and "other questions."

July 16, 1981 -- Second Session

Comment:

1. There is no record on tape that an oath was administered at the beginning of this session.

2. There is no record of a perjury warning nor of an explanation of Fifth Amendment rights.

July 16, 1981 -- Third Session

PROSECUTOR: Would you remind the witness that he is still under oath.

FORELADY: Would the witness and the interpreter please remember you're both still under oath, as of this moment.

INTERPRETER [in Japanese]: Er...as for the interpreter and the witness, er...the oath of a little while ago is still in effect.

WITNESS [in Japanese]: Yes, I understand.

INTERPRETER: (No translation)

Comment:

1. There is no perjury warning nor explanation of the Fifth Amendment.

July 21, 1981 -- First Session

PROSECUTOR: Now, Mr. Kamiyama, this is the third time that you've appeared before this Grand Jury on this matter.

INTERPRETER [in Japanese]: This time, this is the third time we have had you appear before the Grand Jury.

PROSECUTOR: And, am I correct that your attorney is outside the Grand Jury room?

INTERPRETER [in Japanese]: Er...your attorney, is he there?

WITNESS [in Japanese]: Yes.

INTERPRETER [in English]: Yes.

PROSECUTOR: And, that's Mr. Lawler?

INTERPRETER [in Japanese]: That is, er...Mr. Lawler, is'nt it?

WITNESS [in Japanese: That is so. Yes.

INTERPRETER [in English]: That's correct.

PROSECUTOR: And you understand that this Grand Jury is presently investigating violations of criminal tax law as well as other matters, including...er...and is specifically also investigating your own conduct as well.

INTERPRETER [in Japanese]: Er...regarding this Grand Jury...it is to conduct various investigations concerning whether there may have been violations of the...er...tax laws, or again, concerning your actions and conduct.

WITNESS: (Answer not audible on tape)

INTERPRETER [in English]: Yes.

PROSECUTOR: And let me again repeat to you what I mentioned to you at both prior sessions, that if you should give any false answer to any questions that are put to you, that's a separate federal crime, and you can be prosecuted for that.

INTERPRETER [in Japanese]: Er...I have explained this previously twice, but if you give false testimony, this becomes a completely new, another, er...criminal offense.

WITNESS: (Reply not heard on tape)

Comment:

1. No explanation of Fifth Amendment rights is provided.

### July 21,1981 - - Second Session

PROSECUTOR: Would you please remind the witness that he is still under oath.

FORELADY: You are under oath still.

INTERPRETER [in Japanese]: Er...the oath is still effective.

WITNESS [in English]: Yes.

Comment:

1. No perjury warning nor explanation of the Fifth Amendment is provided.

### July 21, 1981 --Third Session

FORELADY: Do you solemnly swear to the testimony that you are about to give to this Grand Jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God.

INTERPRETER [in Japanese]: As for the testimony we will now have you give before the Grand Jury, we would like to have you speak only the truth entirely.

WITNESS [in Japanese]: Yes, I understand.

INTERPRETER [in English]: Yes.

Comments:

1. No perjury warning nor explanation of the Fifth Amendment is provided.

July 21,1981 -- Fourth Session

PROSECUTOR: I am asking you a question, Mr. Kamiyama. If you want to refuse to answer them, you can refuse to answer questions, but you have to answer whatever question I ask you. If you want to refuse to answer them, and exercise your 5th Amendment rights, you can.

INTERPRETER [in Japanese]: I am now directing a question to you, but if you insist on rejecting it, er...the amendment of the fifth article...er...well...according to the...amended law, is it?...you have the right to reject. However, er...I would like to have you respond to what I have asked as far as possible.

WITNESS: (No reply recorded on the tape)

Comment:

1. There is no record of nor reference to an oath, and no warning against perjury.

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General Comments

1. The interpreter obviously had no real knowledge of the Fifth Amendment nor an understanding of its significance. He had not, apparently, ever been briefed on it in advance or during the course of the hearings.

2. The interpreter was unfamiliar with such key legal terms as "perjury" and "swear" in either Japanese or English. He also used an incorrect term for "witness" and rendered "oath" as "declaration."

3. The excessive use of honorific language by the interpreter, when he addressed the witness, was inappropriate for a legal proceeding. The honorific usage (not fully reproducible in English translation) did not accurately reflect the tone of the Prosecutor's questions and detracted from the gravity of the Grand Jury hearing.

AFFIDAVIT

I, John Hinds, duly sworn, depose and say that the following facts are true and correct;

1. I am an associate professor, Department of Speech Communication, and Director of the Center for English as a Second Language, at the Pennsylvania State University. I am fluent in Japanese, and have devoted much of my professional career to the study of Japanese linguistics. My professional qualifications are set forth in more detail in the accompanying curriculum vitae (Exhibit A), which is incorporated herein by reference.

2. At the request of counsel for Takeru Kamiyama respecting United States v. Kamiyama, 81 Cr. 705 (GLG), 82 Cr. 194 (GLG), I have listened to the tape recordings of the testimony of Mr. Kamiyama before the grand jury on July 9, July 16, and July 21, 1981, for the purpose of translating the questions asked of Mr. Kamiyama and the answers he gave. I have also compared the version of the testimony given by the interpreter who was in the grand jury with the translations I have prepared. For the reasons set forth in more detail below, I have determined that the translations contained in the indictment are highly inaccurate and do not approach the standard of care that should be expected even of a reasonably competent iinterpreter, much less that which would be expected of a competent translator. Of a total of 39 question and answer pairs that I have examined, it is clear to me that in 16 instances the answer Mr. Kamiyama gives is simply not a response to the question posed by Mr. Flumenbaum. In 16 additional instances, there is considerable doubt about whether the answer Mr. Kamiyama gives, when correctly translated, is responsive or unambiguous. Thus, in no fewer than 32 of 39 question and answer pairs, the version of the conversation contained in the indictment deviates substantially from what a correct translation would have shown. All subsequent references to translations refer to Exhibit B.

3. Count 9(1): There is no subject in the translated question. The question is therefore ambiguous in that it could mean either "Did you (i.e. Mr. Kamiyama) know that there are stocks in the Reverend Moon's name?" or "Did he (i.e. Reverend Moon) know that there are stocks in the Reverend Moon's name?" It is also not clear because of the way the interpreter phrased this question who actually owned the stocks. It is clear that the stocks are in

Reverend Moon's name, but this does not mean that they necessarily belong to him.

4. Count 9(2): It is not clear who was involved in the conversation. In order to clarify this, it would have been necessary for the interpreter to insert the phrase "with Reverend Moon" into the sentence. There is also no sense in which the English expression "tell" is present in the Japanese translation. The interpreter asks only about stocks, not whether Mr. Kamiyama "issued" them.

5. Count 9(3): The interpreter does not specifically ask with whom Mr. Kamiyama had a conversation although the prosecutor does ask if Mr. Kamiyama had a conversation with Reverend Moon.

6. Count 9(4): The prosecutor asks whether Reverend Moon signed any documents; the interpreter asks if Reverend Moon had to sign any documents. The interpreter has therefore asked whether Reverend Moon had an obligation to sign, and Mr. Kamiyama's negative response to this negates the obligation, not whether Reverend Moon actually signed anything.

7. Count 9(5): This continues the misunderstanding created in 9(4). The prosecutor is asking about whether Reverend Moon actually signed any documents and Mr. Kamiyama is responding that he had no obligation to sign any documents.

8. Count 10(1): Mr. Kamiyama's response to the question states that he was in charge of the checkbook, not that he was in physical possession of it.

9. Count 10(2): There is no verb in the interpreter's question, and so Mr. Kamiyama could not possibly have understood what the prosecutor's question was meant to be. The interpreter added the word "yes" to Mr. Kamiyama's response, making it appear to be a coherent response when it was not.

10. Count 10(3): No comment.

11. Count 10(4): In the question posed by the interpreter it is not clear whose actions are being questioned, Mr. Kamiyama's or someone else's.

12. Count 10(5): Mr. Kamiyama qualifies his answer by stating "as far as I know".

13. Count 10(6): No comment.

14. Count 10: The interpreter asks if the account belonged to Reverend Moon solely while the prosecutor attempted to clarify which account was being discussed.

15. Count 11: Mr. Kamiyama does not respond to the prosecutor's question about the largest single deposit, but rather to the interpreter's imprecise question.

16. Count 11: No comments.

17. Count 11(1): The implication in the interpreter's translation of Mr. Kamiyama's answer is that Mr. Kamiyama received the money, while Mr. Kamiyama does not say that he ever physically received the money.

18. Count 11: No comment.

19. Count 11(2): Mr. Kamiyama's answer is not a direct response to the prosecutor's question. The answer is confused and confusing and would have called for clarification if the prosecutor understood what was being said.

20. Count 11: No comment.

21. Count 11: Mr. Kamiyama's answer is not responsive to the prosecutor's question in that is does not answer "why".

22. Count 11: No comment.

23. Count 11(3): Mr. Kamiyama's answer is not a direct response to the prosecutor's question.

24. Count 12: No comment.

25. Count 12(1): No comment.

26. Count 12(2): The prosecutor asks Mr. Kamiyama if he told Reverend Moon that he was buying additional stock in Tong Il whereas the interpreter asks if Mr. Kamiyama if he told Reverend Moon that he had intentions to buy stock. Mr. Kamiyama's response may reflect his intentions rather than his deeds.

27. Count 12(3): The prosecutor's question requires a "yes" or a "no" answer. Mr. Kamiyama's response, and the interpreter's translation of that response, does not contain either a "yes" or a "no", and therefore it is not a direct response to the question.

28. Count 12(4): No comment.

29. Count 12(5): Mr. Kamiyama's answer is not a direct response to the question since it does not contain a "yes" or a "no".

30. Count 13(1): The question posed by the interpreter is so vague that it is not possible to determine unambiguously who received $5,000, who decided to buy stock, who bought stock, and what stock was bought. Mr. Kamiyama's

negative response could be responding to any of a large number of possible interpretations of the interpreter's question.

31. Count 13(2): No comment.

32. Count 1(1): Mr. Kamiyama's answer is not a direct response to the question.

33. Count 1(2): No comment.

34. Count 1(3): The prosecutor asks an affirmative, and therefore neutral, question. The interpreter asks this question using a negative expression, implying that there were other reasons. The interpreter has therefore asked a leading question.

35. Count 1(4): No comment.

36. Count 1: Again the prosecutor's question is affirmative while the interpreter's version is negative. Also, the expression "legalize" in the interpreter's question implies that prior to the stated time Mr. Kamiyama was in the United States illegally.

37. Count 1(5): Mr. Kamiyama does not answer "yes" or "no" to a question which requires such a response.

38. Count 1(6): Mr. Kamiyama again does not answer "yes" or "no" to a question which requires such a response.

39. I have also reviewed the tape of the grand jury for July 9, 1981, with respect to the oath administered at the commencement of Mr. Kamiyama's testimony. A voice, probably the court reporter, stated the oath in English as follows:

> Do you solemnly swear that the testimony that you are about to give to this grand jury in the matter now pending before it shall be the truth, the whole truth, and nothing but the truth, so help you God?

The interpreter said the following:

> For this, um, um, um, case, as for this, I'd like you to report only the truth, everything the truth.

What the interpreter stated in Japanese was not in the form of a question. It was a declaration. Mr. Kamiyama responded with a word *hai* which may be translated into English as either "yes" or "I have heard what you said". In neither case does Mr. Kamiyama affirm that he has understood that an oath was given. This is especially perplexing since there is a standard way to administer an oath in Japanese and because there are specific words for "swear".

40. To summarize, again and again it is apparent that the court interpreter's translations are ambiguous, misleading, and incorrect in a number of profound ways. The translator neither rendered the prosecutor's questions correctly or unambiguously to Mr. Kamiyama, and he frequently distorted Mr. Kamiyama's responses. It would be a grave mistake to believe that the court interpreter's translations were accurate reflections of either Mr. Kamiyama's or the prosecutor's intentions.

I swear that the foregoing is true and correct. Executed on SEPT 3, 1985.

John Hinds

STATE OF PENNSYLVANIA

Subscribed and sworn before me

SEPT 3, 1985

Jean B Harris

Notary Public

[illegible]

My Commission Expires:

EXHIBIT A

John Hinds
645 Easterly Parkway
State College, PA 16801
814-238-7693

Director, Center for ESL
Associate Professor
Department of Speech Communication
The Pennsylvania State University
University Park, PA 16802
814-865-7365

## Vita

**Education**

B. A. Trenton State College, Trenton, NJ
Major: English
Degree awarded: 1965

| | |
|---|---|
| M. A. | Western Illinois University, Macomb, IL<br>Major: English/linguistics<br>Degree awarded: 1968 |
| Ph. D. | State University of New York, Buffalo, NY<br>Major: Linguistics<br>Degree awarded: 1973 |
| Summer: | Yonsei University, Seoul, KOREA (1973)<br>Seoul National University, Seoul, KOREA (1976) |

**Major positions held**

| | |
|---|---|
| 1965-67 | Linden High School, Linden, NJ—Teacher of English |
| 1969-70 | State University of New York, Buffalo—Graduate Assistant, Department of Linguistics |
| 1971-72 | State University College, Brockport, NY—Instructor in linguistics, Department of English |
| 1972-75 | University of the Sacred Heart, Tokyo, JAPAN—Director of Freshman English and Assistant Professor of English, Department of English |
| 1975-79 | University of Hawaii, Honolulu, HI—Assistant Professor of Japanese, Department of East Asian Languages; Associate Professor (tenure awarded, 1980) |
| 1979-81 | University of Minnesota, Minneapolis, MN--Visiting Assistant Professor of Japanese, Department of East Asian Languages |
| 1981-pres | Pennsylvania State University, University Park, PA-- Associate Professor of Speech Communication and Director of the Center for English as a Second Language (tenure awarded, 1985) |

**Major honors and awards**

| | |
|---|---|
| 1970-71 | Woodrow Wilson Dissertation Fellowship |
| 1970-71 | National Science Foundation Grant for the Improvement of Doctoral Dissertations in the Social Sciences |
| 1976 | Fulbright-Hays Award, Council for International Exchange of Scholars, Seoul National University, Seoul, KOREA (summer) |
| 1977-78 | University of Hawaii Japan Studies Endowment |
| 1981 | Travel Grants from Gest Oriental Library and Department of East Asian Studies, Princeton University, Princeton, NJ (April, November) |
| 1983 | Wenner-Grenn Foundation for Anthropological Research Grant to support research on Japanese eye gaze behavior |

**Listed in**

Directory of American Scholars, Seventh Edition

Men and Women of Distinction, First Edition

International Who's Who in Education

**Major professional activies**

**Referee/reader**

| | |
|---|---|
| 1977, 1981 | Referee for Journal of the Association of Teachers of Japanese |

| | |
|---|---|
| 1980 | Reader for University of British Columbia Press |
| 1982 | Reader for JGE: The Journal of General Education |
| 1983 | Refereee for General Linguistics |
| 1983 | Referee for Conference on Japanese and Korean Linguistics, Harvard University |
| 1984 | Referee for Applied Linguistics |
| 1984 | Referee for Language in Society |
| 1985 | Referee for Studies in Second Language Acquisition |
| 1985 | Referee for Journal of Pragmatics |

Editorial activities

| | |
|---|---|
| 1980-1984 | Editorial Board of Papers in Linguistics |
| 1981-1984 | Review Editor for Papers in Linguistics |
| 1983-1984 | Associate Editor of Papers in Linguistics |
| 1983-pres | Editorial Board of Papers in Japanese Linguistics |
| 1985-pres | Editor of Papers in Japanese Linguistics |
| 1985-pres | Board of Consulting Editors for Linguistics |

**Miscellaneous**

| | |
|---|---|
| 1977 | Committee member, local planning committee for Symposium on Problems in Japanese Syntax and Semantics, Linguistic Society of America Linguistic Institute, University of Hawaii |
| 1982-1984 | Vice-President of Linguistic Research, Inc. |
| 1982-pres | Consultant in forensic linguistics for Fisher and Moest, 2049 Century Park East, Suite 3160, Los Angeles, CA 90067 |

**Lectures and papers delivered**

More than 100 lectures and papers presented in five countries.

**Research interests**

Discourse and conversational analysis, sociolinguistics, Japanese linguistics, nonverbal behavior, cognition, contrastive studies, second language acquisition

**Courses taught**

Japanese language, English language, introduction to language, introduction to linguistics, transformational syntax, semantics, discourse structure, English structure, Japanese structure, field methods, contrastive linguistics, Japanese nonverbal behavior, language and cognition, Japanese conversational analysis, Japanese sociolinguistics, history of English, history of Japanese, theory of second language acquisition, teaching English as a second language, crosscultural communication, sociolinguistics

## RESPONSES OF PATRICK O'LEARY TO WRITTEN QUESTIONS FROM SENATOR HATCH

1Q. Why do you think that it is important that the Court Interpreters Act be broadened to include criminal Grand Jury proceedings and pretrial proceedings in civil cases?

1A. These are the building blocks for both a criminal and civil trial. Any erroneous testimony provided prior to trial will wind its way through the litigation process and take on a life of its own. Testimony containing interpretive errors becomes an established fact which must be challenged and disproven. All of this places an unfair burden on the party who is prejudiced by the error.

2Q. Mr. Kamiyama's testimony indicated that he had no opportunity to select his own interpreter in the Grand Jury process. Do you know how the current process works in civil pretrial proceedings?

2A. Currently, the Court Interpreters Act does not apply to either criminal Grand Jury proceedings or civil pretrial proceedings. Having represented numerous Japanese clients for many years, our firm has some experience with the use of interpreters in civil pretrial proceedings. Generally the system works this way. At a deposition of a non-English speaking witness, both sides bring their own interpreter. However, frequently, the interpreters disagree on the proper way to phrase a question or an answer. To resolve these differences, the Court then has to appoint its own interpreter as an arbiter between the two interpreters. This becomes a very cumbersome and an expensive process. Furthermore, the lack of certification calls into question the validity of any interpretive decisions made by the court's interpreter who acts as an arbiter. Because of the lack of skilled interpreters for Japanese and other Asiatic languages, the problem is particularly acute. It will become even more acute in the future because of the growing internationalization of the U.S. economy which will produce increasing amounts of litigation involving non-English speaking parties. Action needs to be taken now to improve the system's efficiency to reduce the currently used cumbersome and expensive process. I might also add that this process is also employed in the translation of documents where the two sides provide their own interpreters. Where disagreements arise, the court appointed interpreter acts as an arbiter.

3Q. Mr. Kamiyama's statement indicates that he believes errors were made in interpreting his Grand Jury testimony. Do you know how Mr. Kamiyama reached this conclusion?

3A. Mr. Kamiyama drew this conclusion based on the reactions of several skilled English-Japanese interpreters who listened to a tape recorded version of the Japanese language dialogue at the Grand Jury. Subsequent to his indictment, Mr. Kamiyama had learned that the prosecutor had taped his testimony. According to the various interpreters who have listened to the tapes, the Japanese language dialogue differs from the English language transcript upon which Mr. Kamiyama's indictment was based. In some instances, the Japanese language question heard by Mr. Kamiyama was not identical to the English language question asked by the prosecutor. In other instances, Mr. Kamiyama's Japanese language answer differs from the interpreter's English language answer.

4Q. What are the consequences of interpretive errors in a Grand Jury proceeding?

4A. There are at least two major consequences which may arise from interpretive errors. First, the witness, as in Mr. Kamiyama's case, may be indicted and prosecuted for alleged perjury. This occurs where interpretive errors are used to the prejudice of a witness. Second, interpretive errors can cause prejudice to the prosecutor or a non-witness by misleading the Grand Jury. For example, where the Grand Jury is investigating a murder, an interpretive error may suggest that "X" rather than "Y" was the assailant when in fact "Y" was the person who committed the crime. The U.S. criminal justice system disfunctions if the courts do not have competent interpreters where non-English speaking witnesses provide testimony.

5Q. Do you think that certification under the Court Interpreters Act should include a requirement that the interpreter understand the technical concepts of the American criminal justice system and that he be able to communicate these concepts and ideas into his foreign language?

5A. I agree entirely with that proposition. Mr. Kamiyama's case presents some clear examples where some of these concepts were not fully communicated to the witness. I would like to focus on some of the technical areas associated with the Grand Jury process to emphasize this point.

The oath is administered to a non-English speaking witness by the interpreter. This occurs for the obvious reason that the witness does not himself understand the English language administration of the oath. In such case, the responsibility is on the interpreter to impart a notion as to the importance of giving truthful answers. In the English language version of the oath, this notion is provided by asking the witness to swear or affirm that the answers to be given will be truthful and by requesting him to raise his right hand when swearing or affirming. If the interpreter does not employ a meaningful analogue in the witness' own language, the whole purpose and reason for administering the oath may be lost.

Another means of emphasizing the importance of truthfulness is the admonition given by the prosecutor that false testimony could lead to prosecution for perjury. Where a non-English speaking witness is testifying, this admonition is furnished by the interpreter. If the interpreter fails to use a foreign language term which closely corresponds to our concept of perjury, again the importance of testifying truthfully, including the prejudicial effects if false testimony is given, may be lost.

The witness is also instructed on his right against self-incrimination furnished by the Fifth Amendment. Both the prosecutors and the interpreters may contribute to failing to properly advise the witness as to his right against self-incrimination. Rather than elaborating on this right, the prosecutor may casually state that the witness has certain rights provided by the Fifth Amendment. Without some explanation, this statement may be totally meaningless to an interpreter, who is not, himself, well versed in criminal law concepts. The other problem arises where the interpreter inadequately translates this notion about the right against self-incrimination into the foreign language. This is particularly important where the witness' native home's criminal justice system does not confer a right against self-incrimination. Without a thorough and adequate translation of this concept, the witness may never realize that the U.S. system does not require one to be a witness against himself.

Somewhat akin to the right against self-incrimination is the right to remain silent. Again, for a witness that comes from a system which does not embody this concept, the whole Grand Jury process may serve to intimidate the witness into giving testimony where this concept is not adequately explained in his own language. Or, even where the witness' native land embodies the concept of the right to remain silent, such as is the case with Japan, if the right to remain silent is not fully and sufficiently explained in the witness' own language, the witness will not be able to meaningfully choose whether to exercise this right or to give testimony. Under certain circumstances, a witness may be given an immunity order. This creates a need for further explanation as to what the order means and what the witness' responsibilities are pursuant to it.

Senator HATCH. Mr. Mochizuki.

## STATEMENT OF JOHN MOCHIZUKI

Mr. MOCHIZUKI. Good morning, Senator Hatch, Senator DeConcini. My name is John Mochizuki. I reside at 22 South Court, Port Washington, Long Island, NY 11050. My business address is 230 Park Avenue, New York, NY 10169. My principal business is in the export and import field.

Because I am bilingual in Japanese and English, I also perform services as an interpreter. As a native of Japan, I spoke Japanese from childhood. In 1956, at age 26, I immigrated to the United States where I adopted English as my principal language. However, I continue to speak Japanese with my wife, who is a prominent Japanese television correspondent in the United States.

In 1981, I was hired by the U.S. Department of Justice to provide interpretive services for the Government's interrogation of certain Japanese-speaking witnesses before a Federal grand jury empaneled in the Southern District of New York.

One of these witnesses was Mr. Takeru Kamiyama, who testified on July 9, 1981; July 16, 1981; and July 21, 1981. Based on this testimony, Mr. Kamiyama was subsequently indicted for, and convicted of, perjury.

I have included a declaration which I prepared in connection with my services as an interpreter before the grand jury at which Mr. Kamiyama appeared.

My experiences during this grand jury proceeding have prompted me to testify today in support of Senator Hatch's bill, S. 1853. As I already explained in the attached declaration, I learned that criminal law and the criminal justice system are specialized fields requiring a familiarity with, and an understanding of, various technical terms.

A certain amount of substantive knowledge is necessary to effectively translate into Japanese the terms and concepts used in the American system.

The second fundamental thing I learned about translating before a grand jury is the frequently exhausting and intensive nature of the work itself. The interpreter's basic role is to interface between the interrogator and the witness.

In this particular grand jury proceeding, the prosecutor asked questions in rapid succession which left me no opportunity to take sufficient notes. I had no opportunity to reflect before translating the questions and answers and to determine whether any corrections or clarifications were necessary. In this sort of pressurized atmosphere, accurate interpreting becomes difficult.

As commercial relations between the United States and Japan become closer, a well-organized system of court interpretation becomes an absolute necessity. In fact, since we are witnessing an unprecedented phenomenon, namely that approximately 25 percent of all international trade is between the United States and Japan, such a system to upgrade English-Japanese interpretation is long overdue. Thus, it is my great pleasure to see this subcommittee make a conscientious effort to establish such a system.

Based on my experience, I respectfully submit two recommendations to the subcommittee. First, I urge that a standard language proficiency test be established to qualify foreign language interpreters for interpreting in U.S. court proceedings. Second, I recommend that the Court Interpreters Act be amended to cover grand jury investigations in criminal cases and pre-trial proceedings in civil cases.

I believe that S. 1853 goes a long way toward remedying the problems which I have observed. I would like to thank Senator Hatch and the subcommittee for providing the opportunity for me to testify this morning. If you have any questions, I would be pleased to answer them.

[The declaration of John Mochizuki and responses to written questions follow:]

# DECLARATION OF JOHN MOCHIZUKI

My name is John Mochizuki. I reside at 22 South Court, Port Washington, Long Island, New York 11050. My office is located at 230 Park Avenue, New York, New York 10169 and I am engaged in the export and import business.

I was hired by the U.S. Department of Justice prosecutor to serve as an interpreter for Mr. Takeru Kamiyama, a witness before the Federal Grand Jury in the Southern District of New York in the morning and afternoon sessions of July 9, 16, and 21, 1981. I interpreted the prosecutor's questions into Japanese and interpreted Mr. Kamiyama's answers into English.

I had an opportunity recently to listen to the recorded tapes of Mr. Kamiyama's testimony before the Grand Jury during the aforementioned days. In reviewing those tapes, I referred to reports analyzing these tapes prepared by Dr. John Hinds, an associate professor at Pennsylvania State University and Dr. Shoichi Watanabe, a professor at Jochi University. After spending considerable time carefully listening to the portions of the tapes which are directly relevant to the perjury charges brought against Mr. Kamiyama as a result of the Grand Jury testimony, I now have the following recollection.

I recall that at that time the weather in New York was hot and muggy and both of us were kept waiting long hours in a room without air conditioning. As a result, Mr. Kamiyama and I experienced symptoms of heat exhaustion when the Grand Jury proceedings started. I also recall that Mr. Kamiyama had a cold then.

I recall that the prosecutor proceeded so rapidly with the questioning that I felt that I had no time to take sufficient notes, to reflect before interpreting the questions and answers, or to make any corrections after finishing.

Based on my review of the tapes and recollection independent of the tapes. I make the following statements:

1.) I now realize that on neither July 9, 16, nor 21, did I include the word "swear" in my interpretation of the Japanese of the oath and the administration of the oath was not fully conveyed in an understandable manner to Mr. Kamiyama.

2.) In interpreting the perjury warning, I interpreted it as "fraudulent answers, or fraudulent, well, negligence of...uhh, testimony, or...", I failed to use the term "perjury" and as a result the perjury warning as rendered in Japanese was ambiguous and the substance was not conveyed in an understandable manner to Mr. Kamiyama.

3.) Regarding the interpretations in Counts 9, 10, 11, 12, 13 and supplementary Count 1, I am unable to refresh my recollections in each instance independently of the tapes. As a result, for example, in the first specification of Count 9, after listening to the tape, I recall that the prosecutor said, "Did Rev. Moon know he owned stock in Tong Il, that stock was in his name in Tong Il?" I now realize that I interpreted this into Japanese something to the effect: "And, at Tong Il, did (you or he) know stocks are there in the Reverend's name?" Thus, in this instance I now realize that my interpretation of the question was ambiguous, and the question as posed was not accurately conveyed in Japanese to Mr. Kamiyama. I translated into English my own Japanese interpretation and Mr. Kamiyama's Japanese answers on the following 38 pages. Each page contains one specification and my back-translations of my own interpretation of prosecutor's question (shown as prosecution interpreter's version of the question as heard by Mr. Kamiyama) and Mr. Kamiyama's answers (shown as Mr. Kamiyama's answer as correctly translated).

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 9 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did Reverend Moon know he owned stock in Tong Il, that stock was in his name in Tong Il? | A | I doubt it, because I took it up by myself, and did all what I had to do. So, I don't think he knew it. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | And, at Tong Il, did you know that there existed stocks in the name of Reverend Moon? | A' | I don't think I knew it. It was I who did decide and handle it. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 9 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | Prosecutor's Question | | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Q | Did you tell Reverend Moon that you had issued $50,000 worth of stock in his name? | A | No, I never mentioned it. |
| | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | | Mr. Kamiyama's Answer as Correctly Translated |
| Q' | And, did you ever talk about the the existence of stocks in the amount of $50,000 in Reverend's name? | A' | No, I have not. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 9 - - - (3)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | Prosecutor's Question | | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Q | Never discussed it with him? | A | No. It was like my simply borrowing his name, and I did execute it. |
| | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | | Mr. Kamiyama's Answer as Correctly Translated |
| Q' | That, you have never talked about it at all, right? | A' | That's right. I borrowed the name and I did decide and handle it myself. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 9 - - - (4)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did Reverend Moon sign any documents in connection with his ownership of stock in Tong Il? | A | No, there was no such occasion. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | And, regarding stock certificate and the stock ownership, was there an occasion where Reverend had to affix signatures on documents? | A' | No. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 9 - - - (5)

| QUESTION | ANSWER |
|---|---|
| **Prosecutor's Question** | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q And you never talked to him about it? | A That is correct, and nothing of the specific day-to-day office work. |
| **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' And, you haven't talked to Reverend about it. | A' No, I haven't. I never told him about business affairs at all. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (1)

| QUESTION | | ANSWER | |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did Reverend Moon carry the check book with him? | A | He doesn't, because I managed it. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Then, Reverend Moon, does he carry the check book with him? | A' | Oh, I'm sorry. Only I did manage it. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | You carried the check book with you from the very beginning of the account? | A | Yes, I kept it myself from the beginning. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Then, the account was opened initially, did you ca. . . the check book from the beginning, Mr. Kamiyama? | A' | I kept it myself. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 10

| QUESTION | ANSWER |
|---|---|
| **Prosecutor's Question** | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q Did you sign any of the checks for Reverend Moon's account? | A I never signed it myself, although I asked him for signature, and I made a request, but I never signed myself. |
| **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' And, for Reverend Moon's account, did you ever sign the check yourself? | A' I never did sign the check but I have asked for signatures. I never signed personally. There were times when I asked for the signatures. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 10

| QUESTION | ANSWER |
|---|---|
| **Prosecutor's Question** | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q Reverend Moon signed all the checks. | A That's correct. |
| **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' Then, Reverend has signed the checks at all times, right? | A' That's right. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (3)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | And did Reverend Moon write out the other portions of the check, other than the signature? | A | No, no, he didn't do it. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | And, did Reverend Moon ever write the amount, etc. in the check besides the signature? | A' | Never. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (4)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | You prepared all the checks for him? | A | That's correct. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Does that mean that you've prepared all other places so the check be ready to be signed and then asked him for the signature? | A' | That's correct. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (5)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did Reverend Moon ever write any portion of the checks on the Chase Manhattan account other than his signature? | A | He never wrote anything other than his own signature as far as I remember. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | And about the Chase Manhattan Bank account, was date or something added someday somewhere other than Reverend's signature?<br>(Kamiyama: I don't understand the question.)<br>(Question repeated by interpreter) Was there chance that Reverend did write other things than his signature? | A' | Other than the signature, Reverend never wrote anything as far as I remember. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 10 - - - (6)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
|  | **Prosecutor's Question** |  | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | So, to your knowledge, he never wrote anything but the signature; is that correct? | A | To the best of my knowledge, Reverend never affixed anything other than the signature in the book, in the check. |
|  | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** |  | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | That is to say, as far as you recall, Reverend has never written anything in the check other than his signature, right? | A' | Yes, as far as I know, he never wrote anything other than the signature. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 10

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | We are talking about the Chase Manhattan checking account which was opened solely in his name; is that clear? | A | Yes. that's right. But I regarded it as Reverend Moon who represented the International Unification Church. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Ah, the Chase Manhattan Bank account was strictly and solely for Reverend's name, right?<br>Nothing to do with Mrs. Moon. . . . | A' | That's right. But I thought it was Reverend Moon, who represents International Unification Church. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 11

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Now, what was the largest deposit, single deposit that was made into Reverend Moon's account? | A | I think it was around four hundred thousand dollars. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Of the sum deposited into Reverend Moon's account, what do you think was the largest amount? | A' | $400,000 more or less. I think it was about $400,000. I don't recall the details. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 11

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Who deposited that money? | A | I don't remember who I asked to do so. One thing is for sure, I didn't do it myself. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Who deposited the money? | A' | As to who I asked to do the depositing, I don't recall. I am certain that I didn't go out and do it. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 11 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | Prosecutor's Question | | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Q | And where did you get the money, that four hundred thousand dollars, to deposit in Reverend Moon's account? | A | From family fund. |
| | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | | Mr. Kamiyama's Answer as Correctly Translated |
| Q' | Then, as for the $400,000, where was the source? | A' | From Family Fund. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 11

| QUESTION | ANSWER |
|---|---|
| **Prosecutor's Question** | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q And where was the money actually at the time before you deposited it into Moon's account? | A I wasn't physically in charge for that fund. But, I may have asked Miss Tomoko Torii, T-o-m-o-k-o T-o-r-i-i, but without clear recollection. |
| **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' And, of Family Fund, where was it actually kept? Just before the $400,000 was deposited in there. | A' Not that I was in charge of managing it, I have entrusted someone else. I think it was Torii Tomoko. At least about that time, clearly . . . I still think it was Torii Tomoko. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 11 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Well, where did the four hundred thousand dollars -- how did you get the four hundred thousand dollars that you deposited into Moon's account? | A | Over the years. our brethren from Japan, who came to USA, they contribute, and it was accumulated.<br>I remember that there are at least about seven hundred brethren coming to the USA. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | As for this $400,000, where did they come from, anyway? | A' | Well, Japanese brethren, Japanese members came to the U.S.A. in large numbers. They collected the money which came along for some time, then, they have been depossted into the account. I remember about 700 people did come here. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 11

|  | QUESTION |  | ANSWER |
|---|---|---|---|
|  | **Prosecutor's Question** |  | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Was any of the money in the family fund ever used to pay expenses for the Japanese members who had come to New York [sic] ? | A | No. We never did that. |
|  | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** |  | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Also, did you take money out of Family Fund to pay for expenses incurred with the coming of brethren from Japan?<br>(Kamiyama: Incurred with the expenses to come to the U.S.A. or coming over here?)<br>Yes, was Family Fund money used to pay for expenses incurred with air-fares, lay-over, etc. | A' | No. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 11

| | QUESTION | | ANSWER |
|---|---|---|---|
| | Prosecutor's Question | | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Q | So why didn't you put this money in a bank account? | A | Part of which was put into the bank, and the balance was kept. |
| | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama | | Mr. Kamiyama's Answer as Correctly Translated |
| Q' | Then, why did you deposit the money into the bank account? I mean this Family Fund? | A' | A part of it was deposited there and other part was kept with us. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 11

|  | QUESTION |  | ANSWER |
|---|---|---|---|
|  | **Prosecutor's Question** |  | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Well, *did you have a bank account in the name of* the family fund? | A | *No.* |
|  | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** |  | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Did you have the bank account in the name of Family Fund? | A' | No, we didn't. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

**COUNT 11 - - - (3)**

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Why did you use Reverend Moon's name for the family fund? | A | As the money came from overseas, and part of that money may become necessary as expenses to take care of the brethren, we put it in Reverend Moon's name, who legitimately represents International Unification Church. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Well then, why did you borrow Reverend Moon's name for Family Fund? | A' | Well, the money from foreign countries, it was the account of Reverend Moon, who represents International Unification Church. The reason for depositing them into that account was that they came from overseas and that the part of them was put into it when brethren came from overseas. Other part was kep in cash by my instruction so we can meet the payment for emergency expenses. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

## COUNT 12

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Let me show what has been marked -- before I do that -- in January 1974 you bought $100,000 worth of stock in Tong Il; correct? | A | Yes. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | In January 1974, did you buy Tong Il stocks in the amount of $100,000? | A' | Yes. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 12 - - - (1)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
|  | **Prosecutor's Question** |  | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | And you got that hundred thousand dollars from the family fund? | A | Correct. |
|  | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** |  | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Those $100,000, you've gotten them from Family Fund, right? | A' | That's correct. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 12 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you tell Reverend Moon that you were buying additional stock in Tong Il at that time? | A | No, I didn't. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Around that time, did you talk with Reverend about your intention of buying more stocks on top of the foregoing? | A' | I didn't. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 12 - - - (3)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you discuss with him the reason why you were buying stock in Tong Il? | A | I don't dare consult with him on such matters. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Well, the stocks of Tong Il, did you talk with Reverend about the reasons for purchasing the stocks? | A' | (How many times are you questioning me?)<br>I do not talk about such things with him. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 12 - - - (4)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you ask him if it was proper for you to own more stock in Tong Il than Reverend Moon? | A | No, I didn't talk with him about it. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Now then, about the ownership share of the stocks by Reverend, did you talk with Reverend about the propriety of your owning more shares of stocks than Reverend? | A' | No, I haven't. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 12 - - - (5)

| QUESTION | | ANSWER | |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you have any conversations with anyone as to whether or not it was proper for you to own more shares of stock in Tong Il than Reverend Moon? | A | I didn't even think about it a bit. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Well, about the Tong Il stocks, did you ever discuss with anyone about the propriety of your owning more shares than Revered? | A' | Such thoughts never came into my mind. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 13 - - - (1)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you ever tell Michael Warder to tell government investigators that he got $5000 to purchase stock in Tong Il from relatives or friends? Did you ever tell him to give that explanation to anyone? | A | I didn't do it. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | To Mike Warder, did (you) tell (him) to make statement that (he) was given $5,000 by his relatives and/or friends and came to buy stocks if the government's investigation comes after him? | A' | I have not. |

[REDACTED] INDICTMENT S 81 Cr. 705 (GLG)

COUNT 13 - - - (2)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you ever tell Mike Warder to give a false explanation as to how he paid for his stock in Tong Il? | A | No, I didn't. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | As for the circumstances under which Mike Warder came to purchase Tong Il's stocks, did you tell him to make false statement? | A' | No, I haven't. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1 - - - (1)

| QUESTION | ANSWER |
|---|---|
| **Prosecutor's Question** | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q Tell the grand jury why you bought a thousand shares of Tong Il in January, 1974? | A There was a dire need for Unification Church to grow, for the expansion, and we needed it. Anything wrong with it? |
| [KOSAKA'S BACK TRANSLATION] | [KOSAKA'S BACK TRANSLATION] |
| Well, I want you to tell this grand jury from your own mouth that in January 1974 you purchased 1,000 shares of stock. And . . . . Why did you purchase it? | That's because for the future development of the Unification Industry, the money was necessary.<br>In order for the development, that money was needed. Is there something wrong? |
| **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' I want you to tell this Grand Jury yourself that you bought 1,000 shares in January 1974, right? And then . . . (Interpreter: Oh, did you ask why? Prosecutor: Tell the Grand Jury why.) As to why you bought them. | A' That is, we needed money for Unification Industry to grow now. In order to expand, we need money and, is there anything wrong? |

INDICTMENT 82 Cr. 194 (GL 3)

COUNT 1 - - - (2)

|  | QUESTION |  | ANSWER |
|---|---|---|---|
|  | Prosecutor's Question |  | Prosecution Interpreter's Version of Mr. Kamiyama's Answer |
| Q | Did you say Unification Church or Tong Il? | A | I repeat, for the expansion of Tong Il Enterprise we thought it's necessary that this had to be taken care of and I might make one explanation. That is Tong Il Enterprise is called in Japanese 'Toitsu' which means unification in three languages. Phonetically there to be different names, but representing the same thing. One in Korean, one in Japanese and one in English. |
|  | [KOSAKA'S BACK TRANSLATION] |  | [KOSAKA'S BACK TRANSLATION] |
|  | Well. you said for the expansion of the Church. . . . |  | "To:itu" in English is "unification," in Korean it's "Tong Il." In Japanese it's "To:itu." Thus the name of the company is Tong Il Enterprise. That's why. For the purposes of the development of Tong Il Enterprises, to expand the business in the future, (the money) was necessary and . . . I put it there. |
|  | Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama |  | Mr. Kamiyama's Answer as Correctly Translated |
| Q' | Oh, did you say for the growth of the Church? | A' | I want to say, "Toitsu" means "unification" in English, and in Korean language it's said "Tong Il," and "Toitsu" in Japanese. So, the company name is Tong Il Enterprise. For the expansion of Tong Il Enterprise, we did put it there for the growth of our business. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1 - - - (3)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | As you sit here, do you recall any other reasons other than an investment in Tong Il? | A | At any rate, I still insist that for the sake of expansion I did so, and I can't remember any other. |
| | [KOSAKA'S BACK TRANSLATION] | | [KOSAKA'S BACK TRANSLATION] |
| | And, now here. you are in the court. Can't you recall that there were some other, more reasons? | | At any rate, I put it in the sake of development. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | And now that you are in the court, can't you think about any other reasons? | A' | Anyway, I say we did put them in there for the expansion. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1 - - - (4)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| $Q_1$ | Were you having any immigration problems at the time? | A | No, I didn't experience problems with them. |
| | [KOSAKA'S BACK TRANSLATION]<br>Well, at the time, did you have problems with the immigration office? | $A_1$ | [KOSAKA'S BACK TRANSLATION]<br>197 . . . With the Immigration? |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| $Q_1'$ | Around that time, was there any dispute you had with the Immigration Office? | $A_1'$ | 197. . . , what do you mean? What do you mean by Immigration? |
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| $Q_2$ | [KOSAKA'S BACK TRANSLATION]<br>With the Immigration office, say about the entry into this country, visa problems . . . | $A_2$ | [KOSAKA'S BACK TRANSLATION]<br>I didn't have any problems. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| $Q_2'$ | Was there any problem like entry and/or visa involved with Immigration Office? | $A_2'$ | No, there wasn't. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you purchase shares in Tong Il in order to enable yourself to obtain . . . in order to enable you to stay in the United States for a longer period of time? | A | I would like to consult my lawyer. |
| | [KOSAKA'S BACK TRANSLATION] | A | [KOSAKA'S BACK TRANSLATION] |
| | Well, you purchased Tong Il stock, but didn't you do that as a means to legalize your stay in this country and in order to prolong your stay here? | | I would like to consult my lawyer. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | Ah, knowing you've acquired Tong Il stocks, was it not your way to legalize your stay in the U.S.A. and able to stay here for long? | A' | I want to consult with my attorney for a minute. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1 - - - (5)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | Did you make your investment in Tong Il in part for the purpose of obtaining the right to stay in the country for a longer period of time? | A | I want you to know sir. that I did that investment purely for the expansion of the Tong Il Enterprises. |
| | [KOSAKA'S BACK TRANSLATION] | A | [KOSAKA'S BACK TRANSLATION] |
| | Well, you invested in Tong Il but did you do so, although it may not be the sole purpose, in part to enable you to prolong your stay or your desire to stay in this country legally? | | As I have told you earlier, it was for the purpose of the development of Tong Il Enterprises that I invested, and I want you to know that. |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | You've made investment for Tong Il, did you make investment for legalizing your stay in the U.S.A. even if such was not the whole reason behind it? | A' | As I've said before, I made investment for the expansion of Tong Il Enterprise, and I want you to know it. |

INDICTMENT 82 Cr. 194 (GLG)

COUNT 1 - - - (6)

| | QUESTION | | ANSWER |
|---|---|---|---|
| | **Prosecutor's Question** | | **Prosecution Interpreter's Version of Mr. Kamiyama's Answer** |
| Q | And your visa or immigration matters didn't enter into that at all, is that correct? | A | I took that step purely for the expansion of Tong Il Enterprises. |
| | [KOSAKA'S BACK TRANSLATION] | A | [KOSAKA'S BACK TRANSLATION] |
| | Then, can you say that, it never entered in your mind such problems as a visa problem or with the Immigration, and that they have nothing to do with it? | | I invested for the development of Tong Il Enterprises (in Japanese) . . . Tong Il Enterprises (he repeats it in English). |
| | **Prosecution Interpreter's Version of the Question as Heard by Mr. Kamiyama** | | **Mr. Kamiyama's Answer as Correctly Translated** |
| Q' | If so, is it correct that your idea had nothing to do with visa problems or Immigration problems and you were indifferent and unconcerned with it. right? | A' | Toitsu Sangyo, that is, Tong Il Enterprise growth was the reason for my putting it in. |

In conclusion, I now realize that there were occasions in which the prosecutor's questions were interpreted ambiguously and not conveyed in an understandable manner to Mr. Kamiyama.

Finally, reflecting on my experience as a court interpreter, particularly in the Grand Jury proceedings, I personally feel very strongly that the Court Interpreter's Act, PL 95-593, should be strengthened and broadened to cover Grand Jury investigations and pretrial civil court proceedings so that my unfortunate experience in the Kamiyama Case will not be repeated.

~~STATE OF NEW YORK~~ JAB )
District of Columbia ) SS.:
~~COUNTY OF NEW YORK~~ )

John Mochizuki

Sworn To Before Me

This 24th Day of

February, 1986

Notary Public
8/14/89

## RESPONSES OF JOHN MOCHIZUKI TO WRITTEN QUESTIONS FROM SENATOR HATCH

1Q. Have you ever interpreted in either criminal or civil trials, and, if so, approximately how many times?

1A. I have interpreted in about four trials.

2Q. How many times have you interpreted before a Grand Jury?

2A. I have interpreted before a Grand Jury about 3 times.

3Q. In your statement, you commented that interpreting before a Grand Jury can be exhausting. How would you compare interpreting before a Grand Jury with interpreting at a trial? Would interpreting at a trial be more exhausting or less exhausting?

3A. Interpreting in both a Grand Jury proceeding and a trial are difficult but for different reasons. Interpreting before a Grand Jury is exhausting because so many questions are asked in a rapid fashion. Interpreting at some trials can be difficult where a complex subject matter is involved with which the interpreter is unfamiliar.

4Q. When you interpreted before a Grand Jury, who employed you and who paid your fee?

4A. The U.S. Attorney's office employed me and paid my fee.

5Q. How long have you been an interpreter?

5A. I have been interpreting for about 15 years.

6Q. Approximately how many English-Japanese interpreters are there in the New York City area?

6A. My guess is that there are about 6 English-Japanese interpreters who could serve as court interpreters. There are probably 20 or 30 other interpreters who are able to perform in a less complex and less technical environment.

7Q. Your statement indicates that you are a part-time interpreter. Is there enough business for most English-Japanese interpreters to work full-time?

7A. I doubt it. There is not a great demand for English-Japanese interpreters. The business is irregular. An interpreter is called only when a specific need arises for his skills. For this reason, I do not rely solely on my income from providing English-Japanese interpretive services.

8Q. To insure that enough qualified English-Japanese interpreters are available to make the court interpreters program effective, do you think that the Federal government should provide some sort of attractive retainer for interpreters certified under the Court Interpreters Act?

8A. I believe that maintaining a pool of qualified interpreters will require some sort of financial remuneration from the Federal government.

9Q. How many professional English-Japanese interpreters in the New York City area do you personally know?

9A. I know about 4 or 5.

10Q. How many of these people do you feel have the qualifications to interpret in a Grand Jury proceeding or a trial?

10A. I believe that all of them have the capability for performing such interpretive services.

11Q. Do you know how many English-Japanese interpreters are currently certified under the Court Interpreters Act?

11A. No.

12Q. Are you certified under the Court Interpreters Act?

12A. No.

13Q. Did anyone ask you whether you were certified under the Court Interpreters Act before you interpreted in any of the Grand Jury proceedings or trials?

13A. No one ever asked me because nobody knows how the certification process works. However, someone at the U.S. Attorney's office once asked whether I had ever previously interpreted at a trial. I answered affirmatively. That is how I was placed on the U.S. Attorney's office's list.

14Q. Has anyone in the U.S. Attorney's office or in the court system ever suggested that you become certified under the Court Interpreters Act?

14A. On one occasion, about 6 years ago, someone in the U.S. Attorney's office started asking about the certification process. At that time, I stated that I would also like to know about the process in order that I might become certified. However, no one knew how the certification process works. For this reason, I have never made any attempt to become certified and I know of no one who has become certified.

15Q. Before you interpreted for the U.S. Attorney's office, did anyone ever furnish you with a dictionary or book of criminal law terms?

15A. No such book was ever furnished to me, because I do not believe that one exists.

16Q. Prior to interpreting before either a Grand Jury or in a criminal trial, did the prosecutor or anyone else ever spend any time familiarizing you with criminal law concepts and terminology?

16A. No.

Senator HATCH. Mr. Mochizuki, I have read all of your statement. It is a very good statement and it points out, very honestly, some of the difficulties that you confronted in that particular grand jury proceeding in that case.

Mr. MOCHIZUKI. Yes.

Senator HATCH. I would like to ask just a few questions. Ms. Kohn, I think your written statement is excellent, as was your oral statement here today. I am going to submit written questions to you so that you can take your time to answer them. We will keep the record open for all members of this committee to submit their written questions.

Let me begin with Mr. O'Leary. Mr. O'Leary, in your opinion, why were not these translation problems straightened out before the grand jury proceeding or the trial itself, or at least on appeal?

Mr. O'LEARY. The problems were not detected until after Mr. Kamiyama's indictment when Mr. Kamiyama learned that the prosecutor had taped the grand jury proceeding. And after that, Mr. Kamiyama then had certain skilled interpreters review these tapes.

Senator HATCH. They did the actual retranslations?

Mr. O'LEARY. Yes, sir. They compared the English language transcript——

Senator HATCH. Did the trial court direct any attention to that or the court on appeal?

Mr. O'LEARY. I did not represent Mr. Kamiyama——

Senator HATCH. You are saying there were a lot of disparities and that literally he could not have had a fair grand jury proceeding?

Mr. O'LEARY. Yes, sir, and I did not represent Mr. Kamiyama in his subsequent appeal, so I do not know specifically what happened on appeal.

Senator HATCH. I see.

Mr. Mochizuki, how were you hired to do the interpreting at Mr. Kamiyama's grand jury proceeding? Who hired you and how were you hired?

Mr. MOCHIZUKI. Senator, are you asking me as to how I was hired?

Senator HATCH. Yes.

Mr. MOCHIZUKI. My name must be on the list at the U.S. attorney's office in the southern district and I got the phone call and I responded. When I found the dates which were acceptable for me, I appeared before court.

Senator HATCH. Did you feel that you had provided an accurate translation in retrospect?

Mr. MOCHIZUKI. Prior to my seeing the transcripts, and also prior to my relistening to the tapes repeatedly, my feeling was I thought I did a reasonably good job.

Senator HATCH. What do you feel today?

Mr. MOCHIZUKI. I feel today, when I went into the details and making comparison or reviewing, I find that there is room for improvement. If I were to interpret today, I would translate some questions and answers differently.

Senator HATCH. I see. Did you think that you had enough time to fully explain in the grand jury proceedings questions and answers, or did the prosecutor just proceed in very rapid fashion?

Mr. MOCHIZUKI. Well, I had a little notebook, pocket sized, which was lined scratch paper of a little size, and due to time limitation, the best I could do was like, in my own way of—if I may call it a steno, but it is not really a steno—I jotted down some key words so that when I looked back, the key words would remind me again of what the full sentence was, and so forth, to catch up with the natural speed of the proceedings.

Senator HATCH. I think this has been very interesting. I personally believe that Mr. Kamiyama was not treated properly and that he was indicted improperly, especially on the perjury charges.

I think his case does point out—and I think you have been very candid, Mr. Mochizuki, and we really appreciate that.

I agree with you, Ms. Kohn. Nobody should have to go through a criminal trial without accurate translations. I also agree with the two judges who testified here.

Ms. KOHN. I just wanted to add, Senator Hatch, the problem is it is not only in the grand jury where they are not certified, but we are really dealing with the same situation in court, except for Spanish.

Senator HATCH. This testimony has been very startling and interesting to me. We will submit any further questions that we have, also we are grateful that you appeared before the committee.

Senator DeConcini, do you have any questions?

## OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DeConcini. Mr. Chairman, I am going to submit some questions, particularly to Ms. Kohn. I would like to say that as the original author of the Court Interpreters Act, I am very pleased, Mr. Chairman, that you are conducting these hearings. I thank you for scheduling the hearings to discuss improvements in the act.

I agree with the major thrust of S. 1853 to extend the Court Interpreters Act to include grand jury proceedings. It is important that Congress insure that those faced with grand jury proceedings understand what is happening and what is said. I believe that in this most essential judicial forum, we have the responsibility to provide adequate interpreting services to allow defendants to fully participate.

I do have some questions, however, Mr. Chairman, about what the extension will cost. I am most concerned about the effect that the Gramm-Rudman-Hollings law will have on our Federal courts and on our criminal justice system.

I am hopeful that the Administrative Office will be able to provide us with an estimate of the cost of providing interpreters to grand juries. An earlier witness said the cost would be something in the neighborhood of $150,000. I would be surprised if that is what it turns out to be. I will read with interest what has transpired.

I am concerned that some of these provisions may cost a lot more than we realize or may be able to fund. I am also very concerned about the makeup of the task force established in S. 1853.

Although I have my doubts at this point that there is a need for a task force, it certainly seems to me that the composition of the task force mandated by the bill is inappropriate.

The University of Arizona has been a leader in the field of interpretation and is presently working under contract with the Administrative Office to implement the Federal court interpretation certification project.

Mr. Chairman, I was pleased to receive a letter from you last week that reiterates your respect for the University of Arizona and your intent that your bill has no intention of disturbing or interrupting the fine work by Dr. Gonzalez and staff. I would like to place a copy of the letter in the record, Mr. Chairman.

Senator Hatch. Without objection, it is so ordered.

[Copy of the letter follows:]

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COMMITTEES
CHAIRMAN
LABOR AND HUMAN
RESOURCES
JUDICIARY
INTELLIGENCE
BUDGET
OFFICE OF TECHNOLOGY
ASSESSMENT

February 21, 1986

The Honorable Dennis DeConcini
The United States Senate
Washington, D.C. 20510

Dear Dennis:

It has been brought to my attention that an aspect of S. 1853, the Court Interpreters Improvement Act of 1985, has caused some concern for officials at the University of Arizona who administer a very competent court interpretation training center.

S. 1853 proposes the establishment of a task force to supervise certification standards for interpretation services in our federal courts. Presently, the bill contemplates the organization of a regional task force with the chairman to come from the Court Administrators Office of the federal district court in the Southern District of New York. However, that is merely a proposal and I want you to know that I will work closely with you to insure that the most cost-effective and responsible system of court interpretation services is adopted. My bill has no intention whatsoever of disrupting or extinguishing the fine work being performed at the University of Arizona.

My major concern regarding the present court interpretation situation is in the area of grand jury proceedings. The original Court Interpreters Act, which you passed in 1978, did an excellent job but did not apply to grand juries. That is the main reason for my introduction of S. 1853. The task force and certification requirements are incidental proposals which may or may not stand scrutiny. I have no preference for any particular group as a participant on the task force.

I will look forward to working with you on this bill, as I do on all of our work in the Senate.

Sincerely,

Orrin

Orrin G. Hatch

OGH:bt

Senator DECONCINI. Let me congratulate you again for the effort of putting this hearing on. Let me just ask Ms. Kohn one question, and I will submit some others to her.

Ms. Kohn, this particular legislation is directed toward the fine work that the U.S. District Court of the Southern District of New York has been involved in.

I wonder, why do you feel that legislation should specifically designate a district? Should that question not be left to the Administrative Office or the President or the Attorney General.

Ms. KOHN. Well, I agree that specifying the district is not important. I do not know how that occurred. What I do feel is important is that the makeup of this particular task force, because of its mandate, has to include people who are active participants in interpreting services, not just theoreticians.

I certainly believe there has to be a certain autonomous nature so that we can then, therefore, work with the Administrative Office. But as far as who is the head of the task force—I noticed my name was mentioned—that is not important.

I think what is important is that someone with a supervisory background in actual court interpreting services who——

Senator DECONCINI. Is it safe to say that you think that any such task force should have a mix of theoreticians and academicians, as well as practitioners?

Ms. KOHN. I believe the task force should be made up of practitioners and a Federal judge, who will then work with the administrators in the Administrative Office. I think it is important that there be a separate group, and particularly of interpreting professionals.

The point about that position is that any supervisory interpreter who has had a lot of experience in in-court interpreting and with the problems of getting interpreters would be very beneficial to the task force.

Senator DECONCINI. Thank you. I have no further questions at this time. Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator. I appreciate your kind comments.

I want to thank all three of you for appearing. We appreciate the effort you have put forth.

Ms. KOHN. Thank you.

Senator HATCH. Our third and final panel will include three witnesses. The first is Dr. Roseann Gonzalez, who is an associate professor of English at the University of Arizona, and a very active and knowledgeable participant in court interpretation activities. She is currently the Director of the Federal Court Interpreters Certification Project at the University of Arizona.

Welcome to the committee.

Dr. GONZALEZ. Thank you.

Senator HATCH. The second member of the panel is Mr. Dennis Cokely, who is president of the Registry of Interpreters for the Deaf. We are especially interested in receiving the views and input from the hearing-impaired here today, so we are happy to have you as well.

We also have with us Mr. Robert Joe Lee, who is the chief of the court interpreting, legal translating and bilingual services section of the administrative office of the courts in the State of New Jersey. He has recently been instrumental in preparing a very exhaustive and helpful report on the subject of court interpretation services.

I want to thank all of you for coming. I would also like to acknowledge the presence of Judge Shiro Kashiwa, retired from the U.S. court of appeals for the Federal Circuit.

Judge Kashiwa has submitted a written statement on this bill. We would like to have heard his oral statement, but time just does not permit it today.

Once again, we will include all written statements in the hearing record. I am running short on time, so what I would like to do is limit each of you to 5 minutes or less, if you can, put your statements in the records, and then submit questions to you.

So, Dr. Gonzalez, we will turn to you first.

## STATEMENT OF A PANEL CONSISTING OF: ROSEANN DUENAS GONZALEZ, ASSOCIATE PROFESSOR OF ENGLISH, UNIVERSITY OF ARIZONA; DENNIS COKELY, PRESIDENT, REGISTRY OF INTERPRETERS FOR THE DEAF; AND ROBERT JOE LEE, CHIEF, COURT INTERPRETING, LEGAL TRANSLATING AND BILINGUAL SERVICES, ADMINISTRATIVE OFFICE OF THE NEW JERSEY STATE COURTS

Dr. GONZALEZ. First of all, I would like to thank you very much for inviting me here today. I will try my best to be brief.

A great believer in perspective, I would like to begin briefly by telling you a little bit about myself so that you can better understand my point of view.

Senator HATCH. Doctor, if you will excuse me, I have got to run and Senator DeConcini has agreed to finish the hearing. But he also has to leave around 11:30, and we are both really pressured today.

So if you will forgive me, we work very closely on these matters; this is his bill, really, and he has done such a great job on the Judiciary Committee. He has done a great job of making sure that your point of view comes across as well, but I happen to agree with it.

So we are happy to have you here and, if you will excuse me, I have got to run.

Dr. GONZALEZ. Thank you very much.

Senator DECONCINI [presiding]. Please proceed.

Dr. GONZALEZ. I am a first-generation Mexican American whose parents were both born in Mexico and who came across the border to Arizona in the hopes of finding economic and political new frontiers.

I was brought up in a totally bilingual environment and witnessed firsthand what everyone catalogs as the inequities of not being able to communicate with the English-speaking world.

As a child, I saw members of my own family, relatives, friends, disenfranchised, not able to partake of the rights and privileges every American is guaranteed because of the inability to communicate in English.

I saw education as the panacea to all these inequities and, not surprisingly, I became deeply interested in language, which I witnessed to be the primary barrier for millions of Spanish-speaking and other limited and non-English-speaking Americans to equal access to the rights, goods, and services of this society.

My entire professional life, therefore, has been dedicated to the exploration and the study of language as a powerful tool of communication and as a powerful barrier to that which all Americans are guaranteed, in this case, due process.

I will briefly review my credentials: I have a bachelor's degree in English, a master's degree in English as a second language, and a Ph.D. in linguistics. My doctoral dissertation focussed on the language of the court. I analyzed 10,000 words of court transcript, assessing the complexity of courtroom language—what it would take to comprehend that language register by a non-English-speaking person or by an interpreter who would be asked, then, to render that information into a second language.

After careful study of these 10,000 words, I found that it takes a 14th grade level and above comprehension to understand the language of the court, and that the vocabulary of the court is not typical of common language, and that the structure is tremendously complex.

My study, after the passage of the 1978 Court Interpreters Act, became the standard for the minimum competency of the Spanish-English Federal Court Interpreter Certification Examination and would generalize to all other language considered for certification.

I have worked very closely with the Administrative Office of the Courts for 7 years, and very closely with Jack Leeth of the AO, and with Etilvia Arjona, who was also very instrumental in creating of certification.

I would like to point out three concerns I have with this amendment. No. 1, I am opposed to the creation of a $1 million National Court Interpreter's Task Force. The Administrative Office of the Courts has relied heavily on a task force, actually a set of task forces, that the AU has constantly constituted for special purposes of developing certifications examinations, of revising them, of reviewing the philosophy, of looking at the reliability and validity of the examination, looking at the administration of the exam, and considering many other issues pertinent to court intepretation.

Senator DECONCINI. Dr. Gonzalez, I am awfully sorry to have to cut you off, but time is running out and I do want these other witnesses to have the opportunity to testify.

So any statement you want, we will put it in the record as if you read it.

Dr. GONZALEZ. OK. May I say just two things?

Senator DECONCINI. Sure.

Dr. GONZALEZ. After careful study of the amendment I wholeheartedly applaud the extension of certified interpreters to pretrial and grand jury proceedings. However, I believe that there are three parts of the amendment that I think would seriously endanger the very powerful thrust that the Court Interpreters Act had in 1978, and that simply has to do with the extension of certification to eight languages on the basis of some non-understandable, arbitrary selection. This helter-skelter choosing of languages to be certified will place the courts in a very vulnerable situation as it becomes clear to certain language groups that there is no clear criteria upon which they have been excluded.

I suggest that we need to very carefully consider which languages should be included based on frequency of occurance and other reasons. I notice that Navajo was not included in the list. No specifications of the kinds of Chinese are included in this list. I suggest that this section be stricken and rethought logically and systematically.

The other point I would like to make is that the task force that has been proposed is truly an unnecessary, costly new administrative strata whose legitimate tasks can be easily taken care of at no additional administrative cost by the Administrative Office of the Courts. All of the issues that truly need to be studied can be addressed through these kinds of interdisciplinary task forces that have been in existence for the past 7 years and have proved so successful in implementing the 1978 Court Interpreters Act.

Finally, the provision in the amendment for the AO to create criteria for "otherwise qualified interpreters" is a mistake. This provision clearly points to the general lack of forethought evidenced in a majority of the provisions in this admendment.

Creating these criteria for "otherwise qualified" interpreters has 2 profound negative effects.

1. On State and Local Courts: The 1978 act has had a tremendous impact on the quality of interpretation in State and local courts. These court systems have become aware of certification and training as a tool for improvement of interpretation services.

   Setting a Federal precedent to create criteria for the qualifications of "othewise qualified interpreters" as provided in this amendment will reverse this trend toward high standards. Courts will find it easy to model themselves after nontest examination based on evidence of interpreting abilities.

2. On the Profession: Formalized qualification criteria for "otherwise qualified interpreters" will create a second class citizenry or a "parainterpreter" level. This is a dangerous step which would not attend to due process and quality delivery of services.

Again, I would like to reiterate the soundness of extending certified interpreters to pretrial and grand jury proceedings; I congratulate the Senators who supported the introduction of this amendment for that significant step forward. I implore the committee to carefully consider the fiscal and substantive ramifications of the remainder of the provisions in this amendment. Thank you very much.

[The prepared statement and responses to written questions follow:]

## PREPARED STATEMENT OF DR. ROSEANN DUENAS GONZALEZ

Distinguished members of the Constitutional Committee: I would first like to express my appreciation for the opportunity to offer my opinions on the proposed amendment of the Court Interpreters act of 1978. As a great believer in the value of perspective, I would like to preface my discussion of the bill by briefly introducing myself.

I am a first-generation Mexican/American. My parents were born in Mexico and crossed the border into Arizona for economic and political reasons. I grew up in a bilingual environment. Spanish was the language of my home. English was the language of school, business, and the world outside. I saw education as the panacea to all the inequities I witnessed. Some of my own family members and relatives were unable to communicate in English and for this reason were disenfranchised from the rights and privileges of this society. Not surprisingly, perhaps, I grew deeply interested in language, which I witnessed at first hand as the primary barrier for millions of Spanish-speaking Americans to equal access to the goods, services, and rights this society offers. My entire professional life has been an exploration and study of language--its power as a tool of communication and its concomitant function as a barrier to understanding and to the enjoyment of the freedoms guaranteed each and every American.

I received my Bachelor's degree in English Education, my Master's degree in English as a Second Language, and my Ph.D. in Applied Linguistics. My doctoral dissertation focused on the language of the court--or, in professional jargon, the "register" of courtroom language. I analyzed some 10,000 words of court transcript in terms of readability, specialized vocabulary, and grammatical difficulty. I found that, according to the Yoakum Readability Formula, the language of courtroom proceedings customarily demands at the very least a fourteenth-grade level comprehension of English--that is, an equivalent to second year of college; that the vocabulary which typically appears in the court is not at all typical of common speech; and that the language of the court is grammatically complex. The implications of these findings are, I believe, quite obvious.

Shortly after the passage of the 1978 Court Interpreters Act, Mr. Jon Leeth of the Administrative Office of the U.S. Courts (AO), called for my assistance. Since 1979 I have been working with the AO as a member of the initial task force of 1979-1980, which created the conceptual and structural basis for the Federal Court Interpreter certification process and examination. My research served as the basis for determining the complexity level of this examination geared to assess minimum competency.

For a full five years, then, I have played an integral role in every test-development meeting and oral-examination administration training session. In January of 1985, the AO contracted the University of Arizona to assume the test development and administration of the Federal Court Interpreters Spanish/English Certification Examination.

After careful study of the proposed amendment to the 1978 Court Interpreters Act, I conclude that this legislation would seriously endanger the thrust of the 1978 Act. This proposed amendment contains one indisputably progressive component--that is, the extension of federally certified interpreters to grand jury proceedings. Nonetheless, this act does not at all reflect the ingenuous spirit of the 1978 Act. The amendment creates make-work entities that are unnecessary, creates controversy between federal agencies, proposes to attend to issues already attended to, and specifies examinations as criterion-referenced when they have already been developed in that manner since 1979. Further, it institutes criteria for otherwise qualified interpreters which may jeopardize the entire certification process. And finally, it specifies that certification be instituted for a prescribed set of languages instead of on the basis of research and need and will thus possibly dilute the quality of the present Spanish-English certification endeavor.

I would now like to focus on three major features of the proposed amendment, which, in my opinion, would gravely endanger the quality of the court interpreter certification process and the delivery of services: the creation of a national task force, the extension of certification to eight additional languages, and the establishment of criteria for "otherwise qualified interpreters."

To begin with, I object to the establishment of the National Task Force for three reasons:

a) its purpose

b) its cost

c) its composition

As it is now proposed, this Task Force would address issues which have already been addressed by many internal task forces created since the passage of the 1978 Court Intepreters Act. In fact, the success of the Office of Court Interpreting in the AO has derived from its ongoing reliance on a series of task forces created for special purposes and dissolved when finite goals have been met. These task forces have served to set policy and philosophy and to develop and review examinations. Every step taken in the Federal Court Interpreter Certification Project has resulted from the work of such special committees.

Secondly, there is the excessive cost of the Task Force concerns me greatly. To create the Task Force, appoint a full-time director at GS-18, or $64,000 annual salary--plus at least $12,000 in benefits as specified by the bill--is highly questionable inasmuch as an office in the AO has been performing this role all the while. Furthermore, to attempt to legislate that a specific figure fill this directorship--that is, that he or she be the Director of Interpreter Services of the Southern District of New York--suggests that special interests rather than objective criteria dictate the group's creation. Moreover, the specified cost of the Task

Force--the extravagant pay schedules and commitments to pay members for travel time and unlimited per diem, the provision to hire staff as needed without limitation--departs radically from the more customary AO frugality.

Finally, the composition of the proposed Task Force invites a careful scrutiny. The proposed seven members, with the exception of one federal judge, are all interpreters. This narrow, "uni-disciplinary" approach will subject the Task Force to political pressures from other court interpreters regarding test construction and grading and thus jeopardize that necessary objectivity which the current process protects. Indeed, this interdisciplinary approach which has always been the AO's policy has created an exemplary process for certifying court interpreters. Many scholars contend that an interdisciplinary approach is essential to problem-solving; the interdisciplinary approach, providing as it does a multi-faceted perspective, generates more valid products and services of higher quality (Brill in Bloom and Parad, 1976; Hafemeister and Sales, 1984). Etilvia Arjona, former Director of Translating and Interpreting at the Monterey School of International Studies and a graduate of the Graduate of the Geneva School of Interpreting, has concluded that "the very extensive interdisciplinary scope of the matter must always be borne in mind."

In fact, an interdisciplinary policy has always been the governing rationale of the AO. This same office united the team of experts who drafted the first certification examination in accordance with the 1978 Court Interpreters Act. This special task force sought to assess both the qualities essential to successful court interpreting and the methods by which to test these same qualities, all in order to develop a format for a valid, objective certification instrument and to employ these findings to attain certification.

It was the AO task force created in 1979 which initiated this interdisciplinary approach. The professional caliber of this team was impressive. Convening to pool their mutual expertise were ten internationally recognized linguists, interpreters, language specialists, and educators, along with the Director of the Office of Court Reporting and Interpreting Services, Mr. Jon Leeth. For the sake of brevity, I shall mention only a few of these contributors, although all of their collaborative efforts and contributions were of equal significance.

-- **Etilva Arjona**, mentioned above

-- **Dr. Maria Theresa Astiz**, Professor of Spanish at the State University of New York at Albany, a former interpreter of the U.S. Department of State who has conducted intensive studies of court interpreting throughout the U.S. at the local, state and federal levels

and

-- **the late Dr. David Gerver**, Professor of Psychology at the University of Stirling, Scotland, who contributed significantly to the format of the oral examination and to the creation of the examination as a criterion-referenced instrument

The remaining seven contributors were:

-- Dr. Eugene Briere, Professor of Linguistics at the University of Southern California and testor of the Miranda Rights language

-- Dr. Theodore Fagan, Former Chief Interpreter at the United Nations

-- Mr. Alvaro Galvan, Chief Interpreter at the Organization of American States

-- Roseann Duenas Gonzalez, Professor of English at the University of Arizona and Director of the Graduate Studies in English as a Second Language Program who authored the doctoral dissertation examining the use of language in the courtroom, and a consultant to the Educational Testing Service which develops many English language examinations

-- the late Dr. Janet Hartle, Professor of Anthropology and then Provost of Antioch College

-- the late Ms. Ely Weinstein, practicing court interpreter in the Los Angeles Superior Court System and then President of the California Court Intepreters Association

In addition to these ten professionals, three federal district court judges assisted in creating the examinations and were instrumental both legally and practically in reviewing the construction of the test. Their observations regarding real-life courtroom situations in relation to court interpreter functions were invaluable. The three judges were:

-- The Honorable Reynaldo Garza from the Southern District of Texas

-- The Honorable Juan Perez Gimenez of Puerto Rico

and

-- The Honorable Jose Gonzalez of the Southern District of Florida

Finally, contributing significantly to the test construction was Mr. Leeth, who served as coordinator of the project, oversaw the administrative aspects of the examination, and conducted preliminary investigations into what interpreting needs existed in the federal courts.

In subsequent years, eight additional interdisciplinary task forces under the direction of the AO gathered to revise or rewrite the examinations, using the same test format. A listing of these experts is included in Appendix A, which is attached.

I suggest that non-redundant and appropriate special task force issues proposed in the bill be addressed through the existent Court Interpreting Office of the AO--a plan that proves cost-effective. No new staff positions, nor a full-time director, would be required. Task forces could be constituted and reconstituted in concert with meeting goals of particular issues, thereby eliminating an unnecessary strata of administration and clerical staff. Many issues the Special Task Force proposes to address have already been or can be handled far more cost-effectively by drawing upon the resources of extant mechanisms. For example, the Task Force proposes to specify the proper testing instruments to determine the qualifications of certified interpreters. Already this task has been prescribed by the 1979-86 series of task force meetings, in documents such as the oral examination's Rater Training Manual and by several unpublished papers by Etilvia Arjona and myself. The Task Force also proposes to expend time on the setting of fees for interpreters, a matter which hardly seems suitable for a special task force when it can be handled by the appropriate government channels.

More specifically to the issue of the test itself, there is this to consider: The examination has been acclaimed internationally as the "cutting edge" of interpretation assessment. Currently it is being emulated by several states. Its written portion has withstood a legal challenge brought in the Southern District Court of New York; the findings of Judge Milton Pollack in Seltzer v. Foley have become a classic declaration in the field of interpreter testing. Moreover, Professor Edward Haertel of Stanford University and Professor Shitala Mishra of the University of Arizona--both psychometricians--have conducted validation studies and contributed equating procedures for the written and oral portion of the exam.

Since the granting of the contract of the Federal Court Interpreters Certification Project to the University of Arizona, external validity studies of the written and oral examinations have been underway and promise completion by December, 1987. Also in progress is a test-procedure and information booklet which will follow the standards prescribed by the American Psychological Association. Since assuming the project in January, 1985, the University of Arizona has contractually agreed to continue the basic conceptual and structural bases for the written and oral certification examination format set out in the 1979 task force and promulgated by the AO in every subsequent version of the certification exam. To achieve this end, the University hierarchy provides the necessary system of operations, such as accounting departments and physical resources. I suggest that further validation studies and any other pertinent topics be handled through the existing staff at the AO and at the University of Arizona, for reasons of cost-effectiveness and efficiency. Representative members of the court interpreting world as well as linguists and language specialists can be called in as they have been for the past seven years.

I now would like to discuss a seemingly positive aspect of the proposed amendment which may in fact have a profound negative impact on the current high quality standards of certification. The amendment mandates certification for the following languages other than Spanish: Italian, Chinese, Japanese, French (Creole), Korean, Portuguese, Arabic and American Sign Language (See Appendix B). According to the AO's 1984 Interpreter Statistics, Spanish language interpreters in the federal courts were utilized 38,807 times, whereas Italian language interpreters were used only 368 times. Spanish interpreter use represents 91% of all demand for interpreters in federal court while Italian, the next most frequently demanded language accounts for only 1% of all such use.

It is indisputable that every American citizen, whether his language be Italian, Japanese or Yoruba deserves due process under the law. As an academician, I would be misrepresenting the truth if I did not say that mandated research and development for certification in the 61 languages which are employed in federal court would be a reseacher's utopia. However, before legislation occurs, considerations of the efficacy of such an enormous undertaking in light of the necessary financial and resource investments should be more thoughtfully approached.

Census, population, and other language shift and maintenance studies conclusively show that most immigrant languages which are not periodically infused by new arrivals will disappear within one generation (Hakuta, 1986). According to Levin and Farley (1982), Spanish has progressively become the largest non-English language in the United States since 1910. As reported by the _Current Population Reports_ and the _US Census of 1980_, over 12 million Americans reported themselves as Hispanics. For over one-half of those who claimed a language other than English as a home language, Spanish is that language. This information combined with the frequency of Spanish language use in federal courts drives home the point that a decision made to fund the certification of languages should be based on research and need.

Therefore, to develop certification examinations for even the eight languages mentioned would be to acnieve the ideal. That ability hinges, once again, on the reality of financing. In this coming decade of Graham-Rudman cuts, I fear that mandating the certification of eight additional languages would mean not adding to but subtracting from the pot proportionally. The already limited funds available for Spanish certification would be diminished or certification testing would be limited to one effort every five years. The federal standards already established would become a thing of the past.

A more logical and cost-effective approach to certifying high demand languages other than Spanish would be to legislate the creation of consortia of federal, state, and local goverments and agencies to combine resources to create certification instruments for these languages. For example, the states of Washington, California, and Texas, and the AO could combine resources to develop certification examinations in Oriental and other languages of high demand in that region. Federal standards for interpreter certification could be mandated to ensure the level of proficiency necessary for competent interpretation.

The third major weakness in this legislation is its provision that mandates establishment of criteria for "otherwise qualified interpreters." I am strongly opposed to this provision. I firmly believe that it would undermine what the Federal Court Interpreter Certification Examination has striven for and achieved--an objective assessment of qualifications for successful interpreters.

Then, we might ask: Were a set of criteria to exist in order to select otherwise qualified interpreters, what would be the purpose of certification?

To form an impression of the reactions of respected leaders in the field concerning the ramifications of such an action, I informally surveyed five colleagues, including Professor Guadalupe Valdes Fallis, Professor of Spanish at New Mexico State University and an active researcher in legislating state-level court-interpreter certification, and Dr. Sofia Zahler, a Chilean attorney and Director of Interpreting Services at the U.S. Central District Court of California. Both agreed: The establishment of criteria for otherwise qualified interpreters would endanger the certification movement.

Such criteria for the selection of otherwise qualified interpreters would logically include educational level and work experience. Set criteria may deem a bilingual with a Ph.D. in Spanish to be amply qualified to interpret, but in reality such an individual may have poor or nonexistent interpreting skills. Nineteen seventy-nine to 1985 test-administration results and data collected in a 1980 study by Professor Carlos Astiz at the State University of New York at Albany indicate that no direct correlation exists between education and interpreting skills. Many with Ph.D.s have failed the Federal Court Interpreter Examination; many others lacking formal higher education have passed. In other words, criteria such as educational level or experience are not those performance-oriented measures the certification process would demand. In the last seven years, the momentum built up by the 1978 Act has been felt at the state level. States such as California, Texas, Arizona, and New Jersey are now in the process of emulating federal certification processes with legislation of their own. To establish set criteria would only entice state legislatures and courts to move away from performance-oriented certification and would, in the final analysis, hinder rather than help the interpreting profession and thereby the delivery of quality services to the general public.

For the above stated reasons, I support this proposed amendment only as it applies to the extension of federal court interpreters to grand jury proceedings. I strongly urge that a federal and state consortium be designed to address concomitantly the regional language needs of federal and state courts. These actions will be in keeping with the spirit of the 1978 Act. Thank you for your attention.

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## Appendix A - Additional Interdisciplinary Task Force Members

Mrs. Laura Murphy, U.S. Federal Court Interpreter; Dr. Renato Rosaldo, Professor of Spanish, Emeritus, University of Arizona; Mr. Frank Almeida, federally certified interpreter, long-time educator and administrator in the Los Angeles area and court interpreter for the Los Angeles Superior Court System and freelance interpreter, Dr. Mary McGroarty, Professor of Linguistics at the University of Southern California;

Mr. Oscar Ordenes, conference interpreter; Ms. Eva Desrosiers, certified federal court interpreter and conference interpreter, Washington, D.C.; Dr. Linda Haughton, Ph.D. in Spanish and federal court interpreter in the Western District Court of Texas; Ms. Pilar Liria, conference interpreter, Washington, D.C.; Dr. Michael Powers, Professor of Spanish and Linguistics at the University of Miami; Mr. Edward Rock, conference interpreter and supervisory federal court interpreter; Dr. Sofia Zahler, an attorney from Chile who is versed in seven languages including all of the Romance Languages and Russian, and who is the Director of Court Interpreter Services for the U.S. District Court in the Central District of California; Dr. Arminda Fuentevilla, Professor of Bilingual Education at the University of Arizona; Ms. Flora Shanken, of San Francisco, conference interpreter; and Mr. Chandler Thompson, of New Mexico, conference interpreter and certified Federal Court Interpreter.

Appendix B:

## FISCAL YEAR 1984 INTERPRETER STATISTICS

| As Reported by District Courts | |
|---|---|
| Language | Number of Times Used |
| Spanish | 38,807 |
| Arabic | 326 |
| Haitian Creole | 344 |
| Italian | 368 |
| French | 266 |
| Chinese | 200 |
| Thai | 192 |
| Korean | 187 |
| Urdu | 148 |
| Navaho | 147 |
| Yoruba | 119 |
| Portuguese | 102 |
| Cantonese | 93 |
| Mandarin | 92 |
| German | 90 |
| Russian | 71 |
| Punjabi | 59 |
| Japanese | 55 |
| Farsi | 50 |
| Armenian | 49 |
| Chamorro | 45 |
| Vietnamese | 34 |
| Greek | 30 |
| Sign (For Deaf) | 29 |
| Czech | 27 |
| Hindi | 25 |
| Serbo Croatian | 23 |
| Polish | 20 |
| Hebrew | 17 |
| Tagalog | 17 |
| Apache | 16 |
| Tongan | 13 |
| Ibo | 12 |
| Filipino | 12 |
| Laotian | 12 |

| As Reported by District Courts | |
|---|---|
| Language | Number of Times Used |
| Hmong | 12 |
| Bengali | 11 |
| Taiwanese | 11 |
| Turkish | 11 |
| Hungarian | 9 |
| Swedish | 9 |
| Yugoslavian | 9 |
| Carolinian | 5 |
| Papago | 5 |
| Cambodian | 4 |
| Macedonian | 4 |
| Malai | 4 |
| Sicilian | 4 |
| Albanian | 3 |
| Nepali | 3 |
| Romanian | 3 |
| Tamil | 3 |
| Bangla | 2 |
| Dutch | 2 |
| Edo | 2 |
| Lakota | 2 |
| Lebanese | 2 |
| Ashish | 1 |
| Bulgarian | 1 |
| Tewa | 1 |
| Yavapi | 1 |

| As Reported by Bankruptcy Courts | |
|---|---|
| Spanish | 19 |
| Korean | 3 |
| Japanese | 1 |

March 20, 1986

Hon. Orrin G. Hatch
135 Russell Senate Office Bldg.
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am writing with respect to the Court Interpreters Improvement Act of 1985, S. 1853 for which a hearing was held on February 25, 1986. I shall greatly appreciate it if you have the following correction made to the testimony presented by Dr. Roseann Duenas Gonzales, in the **References** section of her written testimony.

Dr. Gonzalez cites the following:

Arjona, E. (circa 1980). "Simultaneous Interpretation and the Psychology of Language." Unpublished manuscript, **University of Arizona, Federal Court Interpreters Project, Tucson, 85721.**

The correct citation is as follows:

Arjona, E. **(1979)**. "Simultaneous Interpretation and the Psychology of Language." Unpublished manuscript, **Psychology Dept., Stanford University.**

The citation as it stands has obvious errors in two respects: (1) the University of Arizona has not had a "Federal Court Interpreters Project" until January, 1985 when it was granted the contract for the administration of the federal certification examination; and (2) I have never attended, worked for, or have been otherwise affiliated with the University of Arizona.

The paper cited was written for a course I took in the Department of Psychology of Stanford University under Dr. Barbara Tversky in the 1978/1979 academic year and it was distributed to all members of the first Task Force convened by Mr. Jon Leeth for developing the federal certification program mandated by the Court Interpreters Act of 1978.

Though unpublished, the paper is on file in several computerized databases for manuscripts, namely, the ERIC Clearinghouse. Given the importance that the congressional record of a bill has, future researchers may be confused by the faulty citation and think that two manuscripts exist or that a non-existent project existed in 1980.

Thank you in advance for the attention I know you will render this request.

Sincerely yours,

Sylvia Arjona

## RESPONSES OF DR. ROSEANN DUENAS GONZALEZ TO WRITTEN QUESTIONS FROM SENATOR HATCH

**QUESTION #1**

**What is your opinion on the best way to ensure that only competent and qualified interpreters appear in our federal courts?**

To answer this question I will first address several major problem areas in S. 1853 and then present my suggestions for improvements. Although the goal of the proposed amendment is noble, it falls short of its intentions because of the lack of foresight of its design. I agree wholeheartedly that the 1978 Court Interpreters Act requires improvement, but I strongly advocate a careful, considered approach. Of primary importance for any amendment to the 1978 Court Interpreters Act is that it keep in sight the millions it was intended to benefit; that it not dilute our potential to serve the largest non-English language population in the United States by taking away resources for that group.

From a policy standpoint, I have major concerns about this bill.

(1) I question the provision in Sec. 4. (b)(1) which specifies languages to be certified rather than stating a rationale for determining which languages will have certification programs. The danger here is that every person and lawmaker will wish his or her language or the languages of their constituency to be represented thereby ignoring a more equitable guideline: that frequency of use serves as a criterion for certification. For example, the bill proposes the certification of other languages along with Spanish; some of these other languages are indeed employed relatively frequently in federal courts; others, however, are not. The bill specifies "Chinese." A more informed proposal would designate a particular dialect of Chinese which is the most pertinent, and would realize that many Chinese dialects are mutually unintelligible. Does S. 1853 refer to Mandarin? Cantonese? Taiwanese? Each would require a separate program of certification.

The list also contains languages questionable in terms of their courtroom utility. For instance, Portuguese may be a relevant language today, but do immigration patterns reveal the number of Portuguese-speaking immigrants to be increasing or decreasing? For those languages designated, do effective studies of language maintenance and language shift inform us of the present and future relevance of each to the court system? Such analysis is still needed.

The greatest failing of this portion of the bill,[(Sec. 4.(b)(1)], is its seemingly arbitrary choice of languages to certify. For example, Japanese is designated for certification, as is Sign Language--even though these two represent, respectively, only 55 and 29 interpreter appearances in 1984.

Thirteen languages which occur with far greater prevalence in federal courts are not named. Particularly distressing is the omission of Navajo, which represents not only the largest Native American language group in the United States, but also the largest Native American population found in federal court. There were 147 interpreter appearances for Navajo, as compared to only 55 for Japanese. This glaring omission renders the bill suspect in terms of special interests and places the government in an extremely vulnerable position. For example, a Thai speaker, whose language occurs in federal court many more times than does Japanese or Sign Language, could challenge the government, refuse to waive his right to a non-certified interpreter, and argue (justifiably) that if language X has been mandated for certification then his own language should receive the same privilege.

Because it designated no languages, the 1978 Court Interpreters Act did not incite this kind of controversy; the choice of which languages to be certified was determined by need and fiscal considerations. The courts have avoided the problem that will surface if this bill, as it is currently written, is passed. Thus far only Spanish speakers have been certified. Why? Spanish interpreter appearances in federal court totalled 39,000 in 1984; a factor of 130 times greater than the next closest language.

The proposed bill encourages each and every interested individual to add his or her own language to the certification list rather than ask what the frequency of occurrence of that language is and if it warrants inclusion. For instance, during testimony on this bill on February 25, 1986, Senator Simon nominated Polish and Russian as additional languages to certify. I fear that during the review stage the list will grow longer and more arbitrary. Why would Japanese, Portuguese, Polish, Russian, and Sign Language be certified when they occur with such relative paucity in the federal courts? How can the government defend its position of not mandating certification for each of the 64 languages employed in federal courts in 1984? It cannot under S. 1853.

2. I question the assumption that creating certification instruments will guarantee a pool of qualified interpreters. Spanish is a case in point: We have tested over 7,000 persons in the last five years and have certified only 292; in other words, about 4% of the population met minimal level competency standards. The following table documents these results.

Table 1: History of Spanish-English Federal Court Interpreters Certification Examination

| Date | #Particip Written Exam | # Passes | #Particip Oral Exam | # Passes | Overall Cert. Rate |
|---|---|---|---|---|---|
| March 1980 | 1,370 | 435(32%) | 371 | 121(33%) | 8.8% |
| Nov. 1980 | 1,601 | 582(36%) | 484 | 75(15%) | 4.7% |
| March 1982 | 1,402 | 276(19%) | 331 | 26(8%) | 1.9% |
| Sept. 1983 | 1,609 | 215(13%) | 362 | 41(11%) | 2.5% |
| June 1985 | 1,196 | 166(14%) | 253 | 29(11%) | 2.4% |
| Totals: | 7,178 | 1,674(23%) | 1,801 | 292(16%) | 4.1% |

What grew immediately apparent during this testing and certification was the pressing need for court interpreter training. In fact, certification initiated an interest which only a small number of practitioners could satisfy. The fact is clear: Smaller language populations such as Japanese will supply a pool of test candidates in proportion to the Japanese--speaking population in the U. S. In the case of languages other than Spanish, we may be spending $300,00C to create an examination which only 50 people will take and of those perhaps only two will be certified. The fact is clear: To create and maintain a pool of certified interpreters, a training program is mandatory.

I maintain that only with training--specifically called for in an optimal amendment and fiscally appropriated for--can the quality of interpreter services be improved. For instance, Navajo linguists estimate that only one Navajo interpreter could pass a competence examination in Navajo-English court interpretation. Therefore, without a supporting training program, certification would be useless. The case of Mr. Kamiyama who testified at the S. 1853 February 26, 1986 Subcommittee Hearing clearly illustrates my point. He attested to being a good interpreter but admitted to problems with the legal register. It would be naive to believe that legislating certification would spontaneously create the competency required for Mr. Kamiyama. What Mr. Kamiyama and many others need is training in proper interpretation skills, basic principals of legal procedure and terminology, and a canon of ethics to follow.

This bill loses sight of the profound issue: that of providing interpreters in federal courts who can form human bridges between two culturally and linguisticically different human beings. I suggest that only certification supplemented by training will ensure that due process will be afforded.

3. I question the wisdom of creating a task force with a separate staff and continuous membership. Such costly bureacracy will only siphon off those resources so sorely needed by the AO for its selection and certification. Because of limited resources, the creation of a Task Force impedes rather than facilitates competent interpretation in the courts.

As it is now designed, the task force would cost approximately $1,000,000.00 that could be spent in training, preparing examinations, and co-sponsoring certification with state and local governments.

Therefore, the task force would prove counterproductive to the important work at hand. Those of us heavily involved in court interpreter training and certification testing can attest to the need to call on various experts to solve different problems as they emerge. A single group could not possibly attend to the wide variety of issues.

Further, for the proposed task force to take a stop gap approach and create "otherwise qualified interpreter" criteria for languages that are not selected for certification invites another host of problems. This approach would defy all that we have striven for by acquiescing to the unfounded assumption that educational and experiential qualifications correlate with interpretation skill; they do not. In essence, we would be creating a para-interpreter level which may have dangerous ramifications for the quality delivery of interpreter services.

SUGGESTED SOLUTIONS TO ENSURE DUE PROCESS RIGHTS

1. After careful study, I would mandate that the AO certify X number of languages, the criteria to include those most frequently occurring in federal courts. The bill would specify languages be selected according to such frequency and according to linguistic and immigration data about the future maintenance of those languages. In addition, the bill would specify that Navajo, the largest Native American language, be strongly considered for certification. (American Sign Language has an excellent internal certification system that could be investigated for compatibility with federal certification.)

> Sec. X. (a) The Director of the Administrative Office of the United States Courts shall certify interpreters based on the results of criterion-referenced performance examinations, to be developed

by the Director. The Director shall examine and certify interpreters in x number of languages to be chosen by the Director as prescribed by subsection (b).

(b) The Director shall consider on an individual basis the frequency of interpreter use in judicial proceedings instituted by the United States in each of the languages under scrutiny. He shall establish the need for certification of each language by conducting thorough studies and, as a part of these studies, shall assess the linguistic and immigration data pertinent to the future maintenance of each language.

(c) The Director shall, before establishing languages for certification, carefully assess and especially consider the needs of Navajo speakers as the largest Native American nation. The Director shall also evaluate the internal certification system of interpreters for the hearing impaired by the National Office of the Registry of Interpreters for the Deaf for compatibility with the federal certification instruments. Based upon said evaluation, the Director shall approve said system for certification.

This legislation would permit a thoughtful examination of the issue rather than a hasty and arbitrary certification process void of any solid rationale; moreover, such an approach would prevent the reckless expenditure on developing certification for languages representing at most some three cases each year in federal courts. It would also avoid amending the bill whenever another language becomes of significance or if it is found that a language written into the law does not belong there, or disappears from use in Federal Court.

2. I suggest that the Department of Labor or Education or whatever appropriate agency be mandated to designate funds for training in these various languages. Creating a policy for

training before testing would prove more cost-effective as the chances for increasing the number of certified interpreters increases, thus justifying $380,000 expenditures per exam for development and administration.

3. To ensure that all persons enjoy due process under the law, I would identify those languages which occur with low frequency sporadically in federal courts but are very prevalent in state courts. Such languages include Mandarin, Cantonese, Thai, Cambodian, Vietnamese, and Laotian. To provide assistance in these languages at not only the federal level--but all levels---federal, state and local governments should pool resources to allow for certification. This action would not only benefit the federal courts but would impact tremendously on state and local courts, where many cases involving these languages are heard daily. A recent study of the Los Angeles Superior court sheds light on planning in this regard. (See Appendix I: "Immigration Issues in Urban Ecology: The Case of Los Angeles".)

4. The Office of Court Interpreting could easily create a task force to address each issue as it arises and promptly dissolve this body when the issue is resolved. By contract, a continuous task force addressing issues of certification in various languages would prove inappropriate. Every language under consideration would necessitate a panel of experts in that language field in addition to test development experts and court interpreters in that field.

## PROVIDING DUE PROCESS AT ADMINISTRATIVE LAW PROCEEDINGS

The spirit of the 1978 Act is truly reflected in the portion of the amendment which extends certified interpreters to persons involved in grand jury proceedings. However, the amendment does not consider the larger issues of due process for the hearing impaired or limited- or non-English-speaking persons. If there are 39,000 Spanish interpreter occurrences in federal courts per year, imagine the thousands, perhaps hundreds of thousands, of persons whose lives depend on the interactions with

Immigration and Naturalization Services, Social Security, Tax Courts, and other administrative law proceedings.

Every day these administrative law courts make judgments that virtually change the lives of the limited- and non-English-speaking persons. These persons are not provided with quality interpreters so that they may understand the issues and defend and explain their positions. Daily, thousands of persons are denied the benefits from these agencies because of miscommunication, misinterpretation, and mistranslation.

Judgments rendered by administrative law judges in these quasi-legal courts leave virtually no recourse for limited- or non-English speakers. Social Security, educational, and disability benefits are decreased or halted--all impacting enormously the daily lives of hundreds of thousands of people. Yet there is no assurance that these persons have been afforded due process.

The federal government has not had to face this issue thus far because no well-grounded legal challenges have been brought against it as yet. The U. S. government could benefit from the costly lesson learned by the Texas State Employment Commission (TEC) in this regard.

A series of lawsuits was filed against the TEC by several limited- and non-English-speaking persons on the grounds of deficient interpreter services at their appeals hearings. The lawsuits claimed that the due process of these individuals had been violated and that they not only deserved their jobs from which they had been severed, but damages as well. These persons sought recourse with the Texas Rural Legal Aid Society who in turn filed multiple suits against the TEC.

Rather than spend hundreds of thousands of dollars on litigation to defend themselves against these justified claims, the TEC chose to solve the problem. The result is a model comprehensive language services program designed to meet the needs of clientele who is most comfortable in Spanish or other languages (Spanish represents more than 90% of the need for interpreters in the TEC). This $360,000 program has far reaching implications for all federal, state and local human service agencies.

I strongly encourage the amendment of the 1978 Court Interpreters Act to include the extension of interpreter services to Immigration and Naturalization, Social Security, Internal Revenue Service and other administrative law proceedings.

Thank you for the opportunity to address the Subcomittee of the Judiciary regarding S. 1853. I would be happy to lend assistance on the rewriting or rethinking of this bill. I support wholeheartedly the intentions of S. 1853 to extend court interpreter services to pre-trial and grand jury proceedings and to ensure equal treatment and equal access under the law.

APPENDIX I

## 3

(From Urban Ethnicity in the United States: New Immigrants and old Minorities; edited by Lionel Maldonade and Joan Moore, Sage Publications, Inc; Bevelyhills, 1985)

# Immigration Issues in Urban Ecology: The Case of Los Angeles

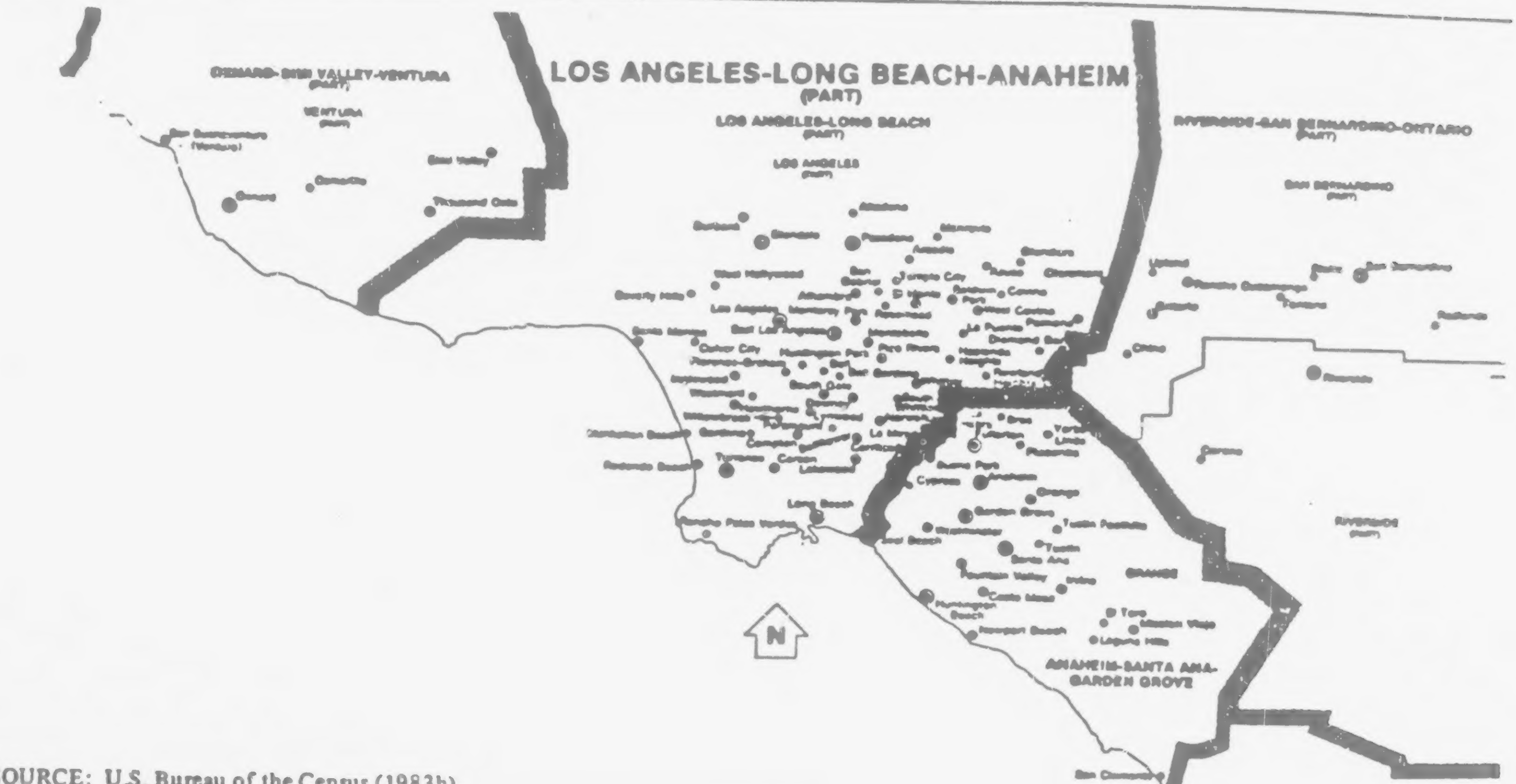
### PHILIP GARCIA

☐ **OUR NEED FOR INFORMATION** on the most recent immigrants from Latin America, Southeast Asia, and other non-European nations spans many research topics. The findings presented here are a response to that need and will provide an update on the status of immigrant colonies and ethnic ghettos in urban centers. My purpose is twofold. The main task is to evaluate the current settlement patterns of some of the new urban immigrants and detect any trends in their geographical dispersion after arrival. I will focus on the degree to which traditional ecological concepts such as residential invasion and succession explain the spatial distribution of the new immigrants. Second, I will present some preliminary remarks on how their settlement patterns affect their relationship with traditional minority and majority group members. The main concern of the chapter is what these relationships imply for the groups' economic status, cohesion, and solidarity.

## SCOPE OF WORK AND METHODS

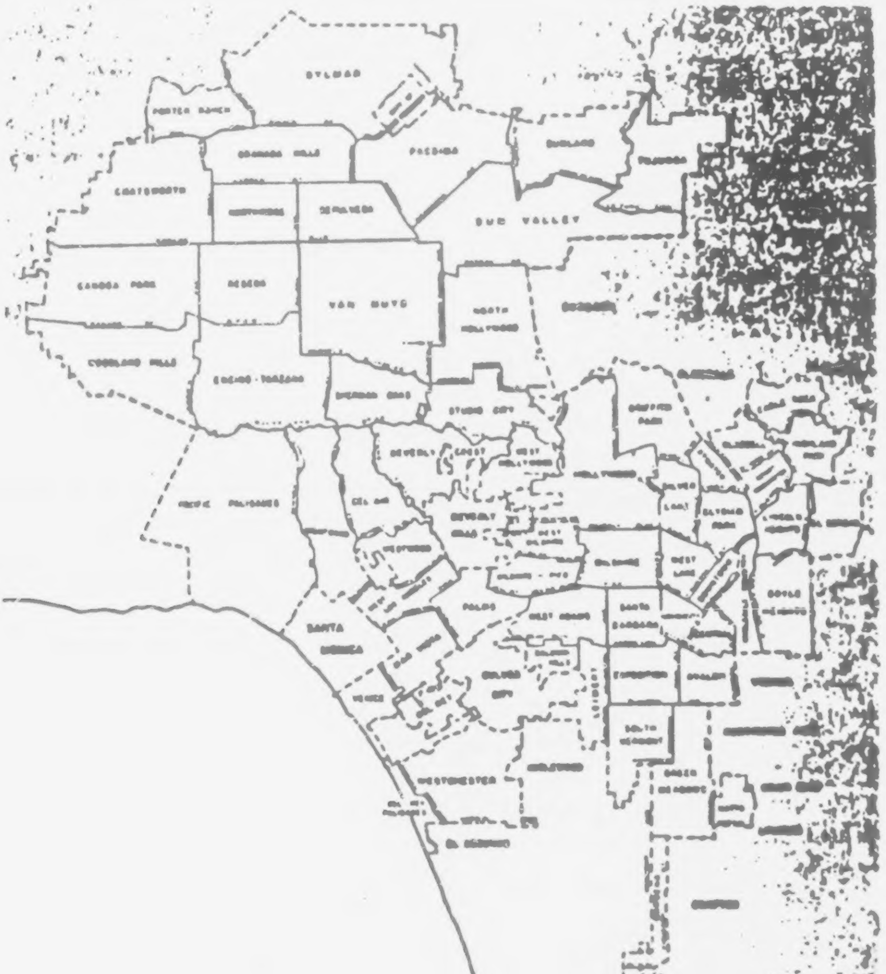
During the 1970s more than 5 million immigrants entered the United States; they settled in every major region of the country. Of course, some states received a disproportionate share. The five states with the largest proportion of new entrants were California, New York, Texas, Illinois, and Florida (Passel and Woodrow, 1984). Obviously, an examination of residential segregation for a national sample of urban areas is an important research task, but it is not the route followed here. Instead, this chapter takes a case study approach.

The target is Los Angeles County. This civic division is the areal equivalent of the Los Angeles-Long Beach Standard Metropolitan


LOS ANGELES-LONG BEACH-ANAHEIM
(PART)
LOS ANGELES-LONG BEACH
(PART)
LOS ANGELES
(PART)
OXNARD-SIMI VALLEY-VENTURA
(PART)
VENTURA
(PART)
RIVERSIDE-SAN BERNARDINO-ONTARIO
(PART)
SAN BERNARDINO
(PART)
RIVERSIDE
(PART)
ORANGE
ANAHEIM-SANTA ANA-GARDEN GROVE
Oxnard
Camarillo
Simi Valley
Thousand Oaks
Burbank
Glendale
Pasadena
Altadena
Arcadia
Monrovia
West Hollywood
Beverly Hills
Temple City
Alhambra
Los Angeles
Monterey Park
East Los Angeles
Santa Monica
Culver City
Huntington Park
Pico Rivera
South Gate
Redondo Beach
Torrance
Carson
Long Beach
Rancho Palos Verdes
Seal Beach
Cypress
Anaheim
Orange
Garden Grove
Westminster
Tustin
Santa Ana
Fountain Valley
Irvine
Costa Mesa
Huntington Beach
Newport Beach
El Toro
Mission Viejo
Laguna Hills
San Clemente
Chino
Corona
Riverside
Upland
Ontario
Fontana
Rialto
San Bernardino
Redlands
N

SOURCE: U.S. Bureau of the Census (1983h).

Figure 3.1 Los Angeles County


SYLMAR
SUN VALLEY
VAN NUYS
STUDIO CITY
SANTA MONICA
WESTCHESTER

SOURCE: L.A. City Planning Division.

Figure 3.2 City of Los Angeles

Statistical Area. Los Angeles County has been a port of entry for many post-World War II immigrants. Close to a quarter of its population is now foreign-born. Almost three-quarters of Los Angeles's foreign-born arrived between 1965 and 1980. It has sizable populations of native American Hispanics, Asians, and Blacks (see Appendix Tables 3.A2 and 3.A3).

*Data.* The demographic analyses are based on enumerations from the 1980 census. The basic unit is the census tract. For Los Angeles, the average tract contains about 4500 residents. Tracts are separated into those within the boundaries of the city and those outside the municipality (see Figures 3.1 and 3.2).

The ethnic and racial categories used here are as follows: Hispanics, Whites or Anglos, Blacks, Asians, and American Indians. Unfortunately, tract data do not disaggregate each ethnic/racial group by nativity. The data do allow us to partition the total foreign-born population into two groups based on their year of immigration. Those who arrived between 1965 and 1980 are referred to as "new" immigrants and those who arrived before 1965 are called "old" immigrants.

*Measures.* Residential segregation has many faces. Some areas have large proportions of minority residents; others do not. Some are characterized by the presence of two major ethnic/racial groups, whereas others have many. Which community would require the most population movement to achieve desegregation: one with a small percentage of minority group members who are highly segregated or one with a large minority population moderately segregated? Or, how does one contrast a biethnic neighborhood with a multiethnic neighborhood in terms of interethnic variety, given that population sizes frequently differ? To answer such questions one must rely on several statistics.

Besides population percentages, three more or less common demographic measures are used here that, taken together, describe various properties of ethnic/racial settlement and segregation. They are the index of dissimilarity (ID), a variant of the replacement index (RI), and the heterogeneity index (HI).

The ID is the primary segregation index. It refers to the percentage of one population that would have to move in order to achieve an even distribution throughout a geographical area. A score of 100 indicates complete segregation between two groups; zero indicates complete integration.

The RI is also a segregation index, but it equals the minimum percentage of the combined population of two groups that would have to move so that each subpopulation could achieve an even distribution throughout a given area. The RI has the same range of possible scores as the ID, and the scores carry the same basic interpretation: The higher the score, the greater the amount of population movement required to desegregate two groups. If we multiply the RI by the number of persons in each of the two ethnic/racial categories, we have an estimate of the actual number of persons who would have to exchange their places of residence in order to achieve complete desegregation.

The third index (HI) summarizes the level of ethnic/racial diversity found in a community. The higher the HI score, the more likely residents of one group will live next door to members of another group. The index takes into account the number of groups present in an area and their relative sizes. The specifics of all three measures are described in Appendix Table 3.A1.

## CHANGES IN ETHNIC COMPOSITION FOR LOS ANGELES

Proportionally, Los Angeles County may have received more international migrants between 1965 and 1980 than any other metropolitan area in the country. Published 1980 census figures suggest that 15.6 percent of its total population consisted of immigrants who arrived after 1965. By contrast, the comparable proportion for the New York urban area, the second largest metropolitan recipient, was 10.2 percent.

This level of immigration has certainly increased the saliency of immigrant status in Los Angeles County. Between 1950 and 1980 the percentage of the foreign-born residents rose from 10 percent to 22 percent. Published figures also indicate that the current immigrant population is overwhelmingly Hispanic and Asian.

About half of all Hispanics and almost two-thirds of all Asians were born in other countries. The other three groups are essentially native populations. These proportions relieve some apprehensions when we are forced to use Hispanic and Asian figures to reveal the probable trend in residential dispersion among the new immigrants (see Table 3.1).

It is not too surprising that most contemporary discussions of immigration or ethnicity in Los Angeles County downplay the issue of European nativity or parentage. Only about 13 percent of its foreign-born residents came from European nations; fewer than 5 percent of all immigrants who entered since 1965 reported a European heritage.

In addition to the small numbers of new European entrants, other factors help to make individual European ancestry groups socially inconspicuous. For example, there does not seem to be any group of

TABLE 3.1 **Percentage Distribution of the Foreign-Born, by Ethnic and Racial Status, for Los Angeles County: 1980**

| *Year of Immigration* | *Total* | *Anglo* | *Spanish* | *Black* | *Asian* | *Indian* |
|---|---|---|---|---|---|---|
| 1965-1980 | 7.7 | 5.2 | 34.1 | 0.9 | 27.5 | 2.0 |
| Before 1965 | 14.9 | 5.8 | 11.5 | 1.9 | 35.1 | 4.4 |
| Native | 74.4 | 89.0 | 54.4 | 97.2 | 37.4 | 93.4 |
| | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Foreign-born | 22.6 | 11.0 | 45.6 | 2.8 | 62.6 | 6.6 |

SOURCE: U.S. Bureau of the Census (1983c).

European ethnics with a large proportion of non-English-speaking monolinguals or English-speaking bilinguals. And European ethnics in California appear to be quite homogeneous across the gamut of socioeconomic indicators provided by the Census Bureau.

The absence of other cultural differences no doubt further reduces the social significance of European backgrounds. For instance, among the four largest European ancestry groups (English, German, Irish, and Italian), mixed ancestry is very common. As a consequence, spatial isolation for these groups from other Anglos looks to be very uncommon (see Table 3.2).

If there is an Anglo subgroup with high visibility, it is the Jewish community. Along with its Mexican Plaza, Chinatown, Little Tokyo, and Koreatown districts, Los Angeles has also a traditional Jewish storefront area in the west-Wilshire district. Jewish neighborhoods were located in the center of the city of Los Angeles as early as the teens (Romo, 1982). Their highest residential densities are now in the west and northwest parts of the city.

Because the Census Bureau does not enumerate religious affiliations, it is very difficult to determine the population parameters of the Jewish community or its level of spatial isolation. Since 1950, the number of American Jews in the area has been estimated at about 500,000.

Traditionally, it has been assumed that people of Russian descent were Jewish (see Rosenthal, 1975). If Russian ancestry is still a reasonable surrogate for American Jews, then the Los Angeles Jewish population is more segregated from other Anglos than the Anglo ethnics listed in Table 3.2. This is because the Russian ancestry group has a much higher percentage within the city than in the county as a whole. To desegregate within the city, 34.4 percent of the Russians would have to move to Anglo neighborhoods.

TABLE 3.2 Social Characteristics of Selected Anglos in Los Angeles County Who Self-Reported European Ancestry: 1980

| *Characteristic* | *English* | *German* | *Irish* | *Italian* | *All Other Anglos* |
|---|---|---|---|---|---|
| Number | 1,177,674 | 983,127 | 73,865 | 289,676 | 1,629,261 |
| Percentage of total population | 15.6 | 13.1 | 11.7 | 3.8 | 21.8 |
| Percentage reporting multiple ancestries | 62.6 | 71.1 | 79.5 | 47.2 | – |
| Index of dissimilarity | 21.7 | 17.0 | 15.6 | 17.7 | – |
| Replacement index | 5.7 | 3.9 | 3.2 | 1.3 | – |

SOURCE: Garcia (1985).

NOTE: The contrast group for the index of dissimilarity was the sum of all other Anglos.

TABLE 3.3 Ethnic and Racial Characteristics for Los Angeles County: 1950-1980 (in thousands)

| | *1950* | | *1960* | | *1970* | | *1980* | |
|---|---|---|---|---|---|---|---|---|
| | *Number* | *%* | *Number* | *%* | *Number* | *%* | *Number* | *%* |
| Anglo | 3,582.9 | 86.3 | 4,770.7 | 79.0 | 4,640.7 | 65.9 | 3,978.0 | 53.2 |
| Hispanic | 286.5 | 6.9 | 597.8 | 9.9 | 1,093.0 | 18.1 | 2,063.8 | 27.6 |
| Black | 220.0 | 5.3 | 531.4 | 8.8 | 724.7 | 12.0 | 942.2 | 12.6 |
| Asian[a] | 62.3 | 1.5 | 138.9 | 2.3 | 187.2 | 3.1 | 478.6 | 6.4 |
| Total | 4,151.7 | 100.0 | 6,038.8 | 100.0 | 7,042.0 | 100.0 | 7,477.5 | 100.0 |
| Heterogeneity index | | 24.8 | | 35.8 | | 51.2 | | 62.1 |

*Decennial Changes*

| | *1950-1960* | | *1960-1970* | | *1970-1980* | | *1950-1980* | |
|---|---|---|---|---|---|---|---|---|
| | *Number* | *% Change* | *Number* | *% Change* | *Number* | *% Change* | *Number* | *% Change* |
| Anglo | 1,187.8 | 33.2 | −130.0 | −2.3 | −662.7 | −14.3 | 395.1 | 11.0 |
| Hispanic | 311.3 | 108.7 | 495.2 | 82.8 | 970.8 | 88.8 | 1,777.3 | 620.3 |
| Black | 311.4 | 141.5 | 193.3 | 36.4 | 217.5 | 30.0 | 722.2 | 328.3 |
| Asian[a] | 76.6 | 123.0 | 48.3 | 34.8 | 291.4 | 155.0 | 416.3 | 668.2 |
| Total | 1,887.1 | 45.5 | 1,003.2 | 16.6 | 435.5 | 6.2 | 3,325.8 | 80.1 |

SOURCE: Community Analysis Bureau (1977), U.S. Bureau of the Census (1983c).

a. Contains a small number of American Indian and other ethnic enumerations.

Without a doubt, the predominance of non-Anglo immigration has helped to reshape the general perception of what is ethnic and dramatically alter the ethnic/racial landscape of Southern California. Compared to the year 1980, the immediate postwar population was relatively homogeneous with regard to the four ethnic/racial categories. In 1950, for instance, the likelihood, in percentages, that two randomly selected residents were of different ethnic/racial background was only about 25 percent. In 1980, the odds were close to 62 percent.

Table 3.3 shows the absolute and proportional increases for each ethnic/racial population between 1950 and 1980. Though Anglo is still the largest category, the countywide percentage declined by one-third during the three decades. Moreover, unlike any of the other ethnic/racial groups, the actual population size of Anglos has been decreasing.

Clearly, Hispanics have contributed most to the postwar population growth of Los Angeles, and they have been the most numerous minority group. (Because of their continuously high growth rate, Hispanics may be at their peak in terms of social visibility.) But as the lower panel of Table 3.3 suggests, each non-Anglo group appears to have had its decade in terms of experiencing the highest proportional rate of net growth: The 1950s belonged to Blacks, the 1960s to Hispanics, and the 1970s to Asians.

Generally speaking, ethnic/racial residential patterns have followed the changing ethnic/racial composition of the population. The number of tracts with overrepresentation of Anglos is decreasing, while those dominated by non-Anglos are increasing. To highlight some specifics on whether the latest ethnic/racial changes have meshed with the overall pattern of population redistribution, we follow an agenda of questions closely derived from the human ecology literature.

## IMMIGRATION AND URBAN ECOLOGY

The topic of immigrant settlement in North American cities carries with it a long history of research. The recorded experiences of the millions of European immigrants who arrived on the eastern shores between the Civil War and World War I are linked inseparably with the onset and development of human ecology as a sociological study area. Data on those second wave immigrants were a cornerstone of the urban ecological structure in the United States. It was observed that low status groups are the primary residents of areas located in the center of the city, whereas high status groups reside outside the inner city. Such data were the heart of the descriptions that outlined the stages of residential change that occur within cities (see Theodorson, 1961).

Over the years the many propositions associated with the early human ecologists were used to account for the residential redistribution of southern Blacks to nonsouthern cities and other immigrants to various metropolitan areas. The findings were mixed. Some researchers, for example, found that distance from the core of an urban area could account for gross residential patterns among status groups. But more of the residential variation could be explained by sectoral development (e.g., Van Arsdol and Schuerman, 1971). Such discordant results were used by critics to counter ecological determinism. In regard to the urban settlement of more recent migrants, the residential patterns of southern-born Blacks seldom conformed to the patterns of their European predecessors. Here, the recurring challenge by critics is whether the ecological models based on second wave immigrants can be generalized to later waves of immigrants who may have arrived under different national and international circumstances.

Nevertheless, there has been fairly consistent support for more than a few of the original observations made by the early human ecologists. Two of the more stable characteristics of U.S. cities have been the spatial clustering of similar socioeconomic status groups and the residential segregation of ethnic/racial minorities. Perhaps because of the enduring nature of these traits, researchers have found it profitable to reexamine the classical propositions of human ecology periodically with new data.

## ARE IMMIGRANTS IN THE INNER CITY?

Several old research questions seem relevant to our interests. Do immigrants still make their initial entry in those residential areas where housing is most available, that is, in the oldest parts of the city?

Immigrants traditionally have been located near a city's downtown area, as in Chicago. The conventional scenario is that new arrivals flock to these older areas (where other immigrants probably first settled); their entry usually means that older residents move to other neighborhoods. Over time, the new immigrants and their offspring become the dominant residents of the older residential areas. In other words, entry communities of first settlement are subject to invasion and succession. If this is the current pattern in Los Angeles, new arrivals would be overrepresented in residential areas nearest the inner city, and they would be more residentially segregated from Anglos than from older immigrant waves.

The traditional central business district or downtown area of Los Angeles is surrounded by seven communities that were established prior to the 1920s: Boyle Heights, Central, Elysian Park, Lincoln Heights, University, Westlake, and the Wholesale District (see Figure 3.2). Approximately 400,000 people reside in these centrally located neighborhoods. Nearly 50 percent of the population in these communities is foreign-born, or double the countywide percentage. New immigrants are more than twice as likely to be found in this central area as in the rest of the county. This overrepresentation is reflected in ethnic figures for the area: 78 percent are Hispanic and 11 percent are Asian.

Another indicator of the central location of immigrants is the population make-up of Los Angeles's traditional Black ghetto. This older residential area, built up by the 1920s, includes Avalon, Baldwin Hills, Central, Exposition Park, Green Meadows, Leimert Park, Santa Barbara, South Vermont, Watts, and West Adams (see Figure 3.2). The percentages of new and old immigrants in this south-central part of the city are almost equal to the county figures. With 21 percent of the population, Hispanics are by far the largest non-Black group in the traditional ghetto.

Between 1970 and 1980, the net Hispanic growth was 117 percent; during the same period the Black population declined by 8.3 percent (Oliver and Johnson, 1984). It is indeed rare for immigrants to have penetrated a high-density Black urban area to such a degree that they have begun to displace its residents. In sum, even the presence of low-income Blacks residing in the core of the city has not deterred many new immigrants from entering the areas adjacent to the downtown business district, just like immigrant waves before them.

Are the new immigrants more residentially segregated from natives than from older immigrants? The answer is yes. About 41 percent of all new immigrants would have to move in order to become fully integregated with the native population, whereas only 25.5 percent of the new immigrants would have to move to achieve an even distribution with old immigrants. (And surely the level of segregation between new immigrants and natives is higher than 41 percent, since the census counts native offspring of foreign-born parents as natives and this lowers the segregation index.)

## INTERETHNIC SEGREGATION

The next questions focus on whether the residential patterns of Hispanics and Asians more closely resemble European ethnics or Black

TABLE 3.4 Indices of Dissimilarity for Ethnic and Racial Groups in Los Angeles County: 1980

| | *Anglo* | *Hispanic* | *Black* |
|---|---|---|---|
| L.A. County | | | |
| Hispanic | 56.9 | | |
| Black | 80.7 | 72.4 | |
| Asian | 49.2 | 53.7 | 83.5 |
| L.A. City | | | |
| Hispanic | 62.2 | | |
| Black | 84.9 | 72.7 | |
| Asian | 51.7 | 44.2 | 78.1 |
| Outside L.A. City | | | |
| Hispanic | 53.3 | | |
| Black | 76.9 | 72.0 | |
| Asian | 48.9 | 64.9 | 91.0 |

SOURCE: Garcia (1985).

migrants. Typically, European ethnics have not been highly segregated—or, if highly segregated, then only for a short time. The segregation of Blacks has been consistently high and unchanging (Lieberson, 1963). And when Blacks move to the suburban ring of a city, these outlying communities quickly tend to become high-density Black areas.

In Los Angeles County Blacks have also been more segregated from Anglos than either Hispanics or Asians. Van Arsdol and Schuerman (1971) reported that by 1960 it was evident that new and old Black enclaves had already developed ghetto characteristics and that Anglos had abandoned the inner city. They also indicated that the lower rates of segregation of Hispanics and Asians were partly due to their location in adjacent suburbs and satellite cities. Their findings from the 1940 to 1960 census data, however, did not exclude the possibility of increased segregation of Hispanics and Asians, since this suburban dispersal had not kept pace entirely with the overall rate of metropolitan expansion.

What is the current pattern of interethnic segregation? Is it stable throughout the county? Our analyses suggest that the basic pattern of segregation from Anglos in 1980 is consistent with the postwar pattern. Blacks are the most isolated and, though to a lesser degree, Hispanics and Asians experience significant levels of segregation. All three non-Anglo groups are spatially isolated from Anglos at levels higher than those

**TABLE 3.5 Population Movement Based on Replacement Ethnic and Racial Groups in Los Angeles County: 1980 (in thousands)**

| | *Anglo* | *Hispanic* | *Black* |
|---|---|---|---|
| L.A. County | | | |
| Hispanic | 1,563.1 | | |
| Black | 1,231.9 | 929.7 | |
| Asian | 404.1 | 398.4 | 513.1 |
| L.A. City | | | |
| Hispanic | 645.4 | | |
| Black | 629.6 | 452.8 | |
| Asian | 179.1 | 141.6 | 174.4 |
| Out L.A. City | | | |
| Hispanic | 898.9 | | |
| Black | 495.1 | 456.2 | |
| Asian | 150.6 | 113.0 | 274.2 |

SOURCE: Garcia (1985).

experienced by European ethnics. Blacks are also highly segregated from the other two non-Anglo groups. Interestingly, Hispanics and Asians are no more segregated from each other than they are from Anglos. These patterns of interethnic segregation are more or less the same in the city and in the suburban areas outside the city. Inside the city, however, Black and Hispanic isolation from Anglos appears significantly higher than outside the city (i.e., by differences of more than five percentage points). Among the non-Anglo groups, only Asians appear to be more segregated in the suburban ring than in the central city (see Table 3.4).

How many people would need to move in order to eliminate the various forms of interethnic segregation found in the county? On the one hand, about 1.5 million persons would have to move to achieve complete Hispanic/Anglo integration, and 398,000 would have to move to achieve complete Hispanic/Asian integration. And whether in city or suburb, the elimination of Hispanic/Anglo segregation would require the greatest movement of people. Within the city, the desegregation of Hispanics or Blacks from Anglos seems to be an equally large order. The least movement would be required in order to affect Asian/Anglo segregation (see Table 3.5).

Because ethnic/racial identifiers have changed over the years, and researchers have not always used the same units of analysis, it is difficult to reconstruct precisely past decennial changes in interethnic segregation for Los Angeles. But overall, both Blacks and Hispanics appeared to be more segregated in 1970 than in 1960 period (compare Grebler et al., 1970; Massey, 1979a, 1979b; Rabinovitz, 1975; Van Arsdol and Schuerman, 1971; Van Valey et al., 1982). The next logical question is: Are the 1980 levels of ethnic/racial segregation higher than in 1970?

A study conducted by the Southern California Association of Governments indicates that the overall spatial isolation of Anglos remained constant between 1970 and 1980 and that Los Angeles County is the most segregated county division in all of Southern California (*Los Angeles Times,* 1982). Other findings are that Hispanics and Asians were more isolated in 1980 and that communities with a well-balanced ethnic/racial mix still are very rare. It appears that Black/Anglo segregation fell 10 percent and Hispanic/Anglo and Asian/Anglo segregation each rose about 10 percent.

Results from Akulicz de Santiago (1984) analyses of central cities indicate that Hispanic/Anglo segregation increased by 6 percent in the city, while both Hispanic/Black and Black/Anglo segregation declined by 10 percent. This suggests that Hispanic/Anglo segregation increased more in the suburbs than in the city.

## ETHNIC/RACIAL INVASION AND SUCCESSION

In many cities, non-Anglos are increasing more rapidly than Anglos. In such cities the most usual outcome is that new minority residents enter (or invade) and take over tracts where they were previously underrepresented while holding onto tracts in which they were overrepresented. This is the classic pattern of immigrant invasion and succession. The rise in some of the segregation indices implies that some ethnic/racial residential succession took place in the last decade. The question now is: What was the overall pattern of invasion and succession?

Massey (1983) compared 1960 and 1970 Los Angeles data for Anglos, Blacks, and Hispanics. He found some significant differences in ecological patterns for Blacks and Hispanics: Invasion followed the entry of Hispanics into new neighborhoods, but Hispanic succession was not inevitable or even likely in many residential areas. An implicit conclusion was that Anglo-Hispanic segregation is muted by the absence of inmigrant succession.

**TABLE 3.6 Racial and Ethnic Composition of Census Tract Clusters for the City of Los Angeles: 1950-1980 (in percentages)**

| *Cluster* | *Tracts*[a] | *Anglo* | *Hispanic* | *Black* | *Asian*[b] | *HI* |
|---|---|---|---|---|---|---|
| Anglo | | | | | | |
| 1980 | 44.2 | 78.8 | 15.2 | 3.4 | 2.6 | 35.4 |
| 1950 | 88.0 | 92.2 | 4.5 | 2.3 | 1.0 | 14.2 |
| change | −43.2 | −13.4 | 10.7 | 1.1 | 1.6 | 20.2 |
| Hispanic | | | | | | |
| 1980 | 22.0 | 18.2 | 67.4 | 6.0 | 8.4 | 50.2 |
| 1950 | 3.5 | 35.4 | 52.8 | 6.7 | 5.1 | 58.9 |
| change | 18.5 | −17.2 | 14.6 | −0.7 | 3.3 | −8.7 |
| Black | | | | | | |
| 1980 | 18.3 | 1.3 | 7.1 | 89.2 | 2.4 | 19.8 |
| 1950 | 4.5 | 10.6 | 8.8 | 77.9 | 2.7 | 37.3 |
| change | 13.8 | −9.3 | −1.7 | 12.2 | −0.3 | −17.5 |
| Asian | | | | | | |
| 1980 | 5.0 | 12.8 | 38.5 | 11.3 | 37.4 | 68.2 |
| 1950 | 0.1 | 54.5 | 7.3 | 6.7 | 31.5 | 59.4 |
| change | 4.9 | −31.7 | 31.2 | 4.6 | 5.9 | 8.8 |
| Mixed | | | | | | |
| 1980 | 9.9 | 47.2 | 27.2 | 12.7 | 9.9 | 68.7 |
| 1950 | 3.8 | 46.3 | 19.1 | 20.8 | 13.8 | 67.7 |
| change | 6.1 | 0.9 | 8.1 | −8.1 | −0.9 | −1.0 |

SOURCE: Community Analysis Bureau (1977).

a. The numbers of tracts analyzed for 1950 and 1980 were 710 and 695, respectively.

b. Contains a small number of American Indian and other enumerations.

The figures in Table 3.6 show several aspects of ethnic/racial invasion and succession in the city of Los Angeles. This table shows tracts clustered by the largest ethnic/racial group present. A "mixed" cluster is tracts where no one group dominated (i.e., composed 50 percent or more of the population).

The change figures in the column labeled "tracts" summarize the succession that occurred. Between 1950 and 1980, the number of Anglo tracts fell by 43.2 percent. We note that 18.5 percent became Hispanics; 13.5 percent Black; 4.9 percent became Asian, and 6.1 percent mixed (with the largest non-Anglo group being Hispanics). This turnover was almost entirely confined to the most central part of the city (Community Analysis Bureau, 1977).

In most cases, the composition and degree of overall diversity within each ethnic/racial cluster changed noticeably. Anglo neighborhoods are now more heterogeneous. In 1950, the likelihood that two neighbors in Anglo tracts were of different groups was just 14.2 percent; in 1980 the likelihood is about 20.2 percent. The increased presence of Hispanics is the main reason for the greater diversity. Despite a large loss of Anglo residents, Asian clusters also increased in their ethnic variety. Again, Hispanics accounted for the greater diversity. On the other hand, Hispanic and Black clusters are now less heterogeneous than they were in 1950.

All of the non-Anglo groups broadened their geographical dispersion between 1970 and 1980. Asians might have made the greatest number of new entries into the suburbs of the groups (*Los Angeles Times,* 1982). But in most cases new Asian residents did not exceed 5 percent of the indigenous population in areas where they were initially few in numbers. For the suburbs, Asian invasion really only took place in the Hispanic area of Monterey Park. In 1980 they accounted for 33.6 percent of the population of this area, a twofold increase from 1970. Black succession appeared to have taken place in the south-central suburbs of Carson and Gardena, but there also has been a steady growth of Asians and Hispanics in these communities. On the whole, Black and Asian invasion and succession into suburban areas has been very limited between 1970 and 1980.

In the last decade, the Hispanic population continued its expansion outside the city. Table 3.7 displays the Hispanic concentrations in selected suburbs where they have had relatively high visibility for the past twenty years. All 21 of these communities are located on the east or southeast side of the city. In 1960, only in East Los Angeles, the city's traditional barrio, were Hispanics the numerical majority. By 1980, ten additional communities had Hispanic percentages in excess of 50 percent, and at least four more communities had 50 percent concentrations. In contrast to Hispanic growth, other populations declined. Only in the communities of Hacienda Heights and Paramount did the Anglo population grow in actual size between 1970 and 1980. By most definitions these figures suggest a pattern of widespread suburban succession (see, for example, Taeuber and Taeuber, 1965).

## SOCIOECONOMIC INTEGRATION AND ETHNIC DISPERSION

Our last ecological question concerns the relationship between socioeconomic status and ethnic/racial segregation. After exploring the

**TABLE 3.7 Percentage of Hispanics in Los Angeles County for Selected Areas Outside City Limits: 1960-1980**

| | *1960* | *1970* | *1980* | *Non-Hispanic Change* [a] |
|---|---|---|---|---|
| Alhambra | 4.3 | 17.4 | 37.6 | - |
| Azusa | 17.5 | 35.3 | 42.3 | - |
| Baldwin Park | 8.7 | 30.0 | 58.1 | - |
| Bell Gardens | 2.2 | 19.7 | 64.3 | - |
| Carson | 7.8 | 18.3 | 23.3 | + |
| City of Commerce | 41.0 | 69.0 | 85.0 | - |
| Compton | 9.0 | 13.5 | 21.1 | 0 |
| East Los Angeles | 67.9 | 87.2 | 94.1 | - |
| El Monte | 13.7 | 31.4 | 61.4 | - |
| Hacienda Heights | 8.9 | 20.9 | 26.4 | + |
| Huntington Park | 4.5 | 35.9 | 80.7 | - |
| La Puente | 21.7 | 46.2 | 62.5 | - |
| Lynwood | 3.5 | 16.1 | 48.5 | - |
| Montebello | 18.4 | 44.2 | 59.3 | - |
| Monterey Park | 11.6 | 18.1 | 38.8 | + |
| Norwalk | 15.0 | 25.7 | 40.1 | - |
| Paramount | 7.8 | 17.9 | 46.2 | + |
| Pico Rivera | 26.4 | 59.2 | 76.1 | - |
| Pomona | 9.2 | 16.3 | 30.1 | - |
| Rosemead | 20.0 | 34.8 | 57.4 | - |
| San Gabriel | 15.3 | 25.5 | 38.2 | - |

SOURCE: Garcia (1985).

a. This refers to non-Hispanic population changes for 1970-1980: a zero indicates a change of fewer than 100 persons; a minus sign indicates a decrease in the absolute number; a plus sign indicates an increase in the absolute number.

impact of education and family income on segregation in areas of sizable Hispanic and Black communities, Massey (1978, 1979a) concluded that Hispanic segregation from Anglos was mainly due to their low socioeconomic position, but that was not true for Blacks. The forecast, then, for Hispanics was that as the group improved its overall socioeconomic position, the level of spatial isolation would decline.

**TABLE 3.8 Indices of Dissimilarity, Conditioned by Education or Family Income, for Ethnic/Racial Groups in Los Angeles County: 1980**

| | | *White vs.* | |
|---|---|---|---|
| | *Hispanic* | *Black* | *Asian* |
| Education | | | |
| elementary (0-8 years) | 68.2 | 90.7 | 69.8 |
| some high school (1-3 years) | 64.6 | 86.9 | 69.5 |
| high school (4 years) | 63.3 | 84.4 | 68.2 |
| some college (1-3 years) | 64.1 | 81.7 | 66.1 |
| college (4 or more years) | 66.6 | 81.7 | 67.4 |
| Family income | | | |
| 0-$4,999 | 66.6 | 88.0 | 66.5 |
| $5,000-$7,499 | 66.7 | 87.3 | 71.3 |
| $7,500-$9,499 | 66.2 | 87.3 | 71.9 |
| $10,000-$14,999 | 64.4 | 85.3 | 66.3 |
| $15,000-$19,999 | 64.4 | 85.3 | 66.3 |
| $20,000-$24,999 | 62.9 | 85.1 | 62.8 |
| $25,000-$34,999 | 61.5 | 84.9 | 61.5 |
| $35,000-$49,999 | 61.9 | 84.8 | 61.9 |
| $50,000 or more | 71.2 | 85.1 | 66.0 |

SOURCE: Garcia (1985).

In Table 3.8 the level of segregation of Hispanics, Blacks, and Asians from Anglos is calculated, when socioeconomic level is controlled. How segregated are these groups from Anglos when the ethnics share levels of education and income? Following the procedures of Massey (1979a), five educational levels for adults and nine for family income were used. Once these data are examined carefully, it becomes apparent that segregation from Anglos does not decrease when any single ethnic group shares socioeconomic status with Anglos.

## HOW ACCURATE WAS THE OUTLOOK FOR 1980?

The data confirm the classical human ecology tenets regarding immigrant settlement. However, the findings and the information from other studies are at odds with some predictions made about the path of ethnic segregation in Los Angeles County. Instead of a decline in intergroup isolation, a general increase seems to have occurred; and ethnic succession appears to be the course of Hispanic residential patterns rather than spatial assimilation.

Why has the degree of segregation of Anglos remained high? And why has Hispanic and Asian segregation increased? Precise answers to these questions require a fuller analysis, but the data do reveal some telling points.

First, the enormous size and restricted geographical distribution of the new immigrants directly contributed to the higher levels of segregation by raising their concentrations in traditional ports of entry. At best this is only a small part of the story. Factors contributing to the decline in the absolute numbers of Anglos, such as outmigration and low fertility, are equally noteworthy determinants of the increased ghettoization of the county.

The change-figures in Table 3.3 help to illustrate the importance of both in- and outmigration patterns. In the last decade, the average annual population change for Anglos was a loss of 66,000 people. The comparable change-figure for the combined Hispanic and Asian population was a gain of 83,000 people. Thus for every net gain of 10 Hispanics or Asians, there was a net loss of 8 Anglos.

In this light, it is easy to see why predictions about segregation in 1980 did not materialize. To the extent that forecasters were unable to foresee the divergent changes in the Anglo and non-Anglo populations, their predictions were destined to be off target.

Another factor that may also have altered the predicted path of ethnic/racial segregation was the decline in metropolitan growth. With a net population gain of 6.2 percent in the 1970s, Los Angeles County no longer appears to be an expanding locale. The surrounding counties of Orange, Riverside, San Bernardino, and Ventura, in comparison, had gains that ranged from 32 percent to 45 percent, and their accumulated gain accounted for 72 percent of the net gain for the five-county area. More so than ever, desegregation in Los Angeles must be a function of population redistribution rather than equal access to newly developed residential neighborhoods. If ethnic/racial segregation does not vary across socioeconomic statuses (Table 3.8), then the likelihood of any large-scale intergroup redistribution in the near future is most unlikely.

## DISCUSSION

A central concern of many who have researched interethnic segregation is the extent to which minority-group isolation impedes economic progress and overall social integration. The new immigration will certainly resurrect old themes regarding intergroup conflict, cultural adaption, and individual and structural assimilation for future research programs. Although a direct response to any of these open-ended issues is beyond our present means, we would like to conclude by making some brief general comments about how this new era of invasion and succession of "fourth wave" immigrants might affect the direction of interethnic relations.

Community-based resistance to ethnic/racial invasion is often linked to the degree of solidarity found among the older residents (e.g., McKenzie, 1967). And as Logan and Stearns (1981) conclude, the most common motive cited for exclusionary practices is the fear of status deprivation. It is a fear among present occupants that their community will lose status if the homogeneity of the population is altered. At the heart of the matter then is how people perceive out-group members vis-à-vis residential change.

Certainly Hispanics and Asians share characteristics that have historically exacerbated social divisions in the United States. Both groups are visibly different and also culturally distinctive. For instance, in 1980, only 19.8 percent of Hispanics and 26.4 percent of Asians residing in the county were English monolingual speakers. And in socioeconomic terms, Hispanics do not do very well in terms of completed schooling and personal or family income, although Asians tend to approach the norm. Paradoxically, Hispanics continue to attain higher annual income levels than Blacks despite their much lower educational attainments (see Appendix Table 3.A4).

How are ethnic/racial groups ranked in terms of social distance? Table 3.9 displays the subjective ranking of ten ethnic/racial categories by a national probability sample of Black and Anglo respondents and a separate probability sample of Black and Anglo respondents residing in Southern California. Feelings toward a group could range from 0 to 100, with 100 being the most favorable response. In most cases the response patterns of each sample were identical.

With the exception of the American Indian category, all the non-Anglo groups were ranked below the European categories. Interestingly, the groups that denote immigrant status (i.e., Chinese through Vietnamese) rank below the categories that denote native populations. More interesting, the two groups that denote refugee status (i.e., Cubans and Vietnamese) were ranked the lowest of all. How much these rankings actually reflect anti-ethnic or anti-immigrant feelings is, of course, arguable. Yet the response pattern does parallel an immigrant-to-nonimmigrant social distance continuum.

TABLE 3.9 Feelings Toward Different Ethnic and Racial Groups

| | *Total* | *Southern California* |
|---|---|---|
| Very favorable | 100.0 | 100.0 |
| English descent | 75.3 | 76.6 |
| Irish | 72.7 | 74.4 |
| American Indian | 73.6 | 72.8 |
| German American | 70.5 | 70.8 |
| Blacks | 67.3 | 67.5 |
| Chinese | 63.5 | 66.1 |
| Mexican American | 63.5 | 65.9 |
| Puerto Rican | 56.5 | 58.1 |
| Cuban | 53.1 | 55.3 |
| Vietnamese | 56.1 | 55.1 |
| Total | 1378 | 96 |

SOURCE: Cardoza et al. (1984).
NOTE: Data are from a national probability sample of Anglo and Black respondents. Southern California respondents resided in Los Angeles and San Diego.

A now familiar concern in many urban centers is a negative backlash response by Anglos with regard to minority groups and social change. There is also a growing concern about possible tension between lower-status minorities and the latest wave of immigrants. For example, the argument has been raised that recent entrants have threatened the economic position of Blacks (e.g., Jackson, 1979).

Is there a minority-backlash attitude by Anglos in Los Angeles? And how do Blacks evaluate their economic status in contrast to immigrants groups? Our Southern California data indicate that 38 percent of Anglos in Los Angeles believed that minorities are given too much special consideration. A slightly higher percentage felt that Blacks have only a few problems in getting hired or promoted. About 14 percent thought that Hispanics enjoy better chances for getting ahead. In the national sample, 26 percent of the Black respondents thought that their chances for getting ahead were less than for Hispanics (see Table 3.10).

Observations from Oliver and Johnson's (1984) study of Los Angeles inner city residents reveal a similar pattern of intergroup tolerance.

**TABLE 3.10 Attitudes Toward Ethnic and Racial Minorities, by Race (in percentages)**

| | *Total* | | *Southern California Anglo* |
|---|---|---|---|
| | *Anglo* | *Black* | |
| How much special consideration is being given to racial minorities right now? | | | |
| too much | 42 | 09 | 38 |
| right amount | 33 | 21 | 40 |
| too little | 25 | 70 | 22 |
| Would you say Blacks miss out on jobs or promotions because of discrimination? | | | |
| none | 07 | 0 | 07 |
| a few | 36 | 0 | 36 |
| some | 30 | 33 | 30 |
| many | 27 | 67 | 27 |
| Compared to Hispanics, do you think the chances for getting ahead for are much worse? | | | |
| much worse | 03 | 07 | 05 |
| worse | 07 | 19 | 09 |
| same | 45 | 51 | 34 |
| better | 22 | 17 | 30 |
| much better | 23 | 06 | 22 |
| Total | 1217 | 168 | 92 |

SOURCE: Cardoza et al. (1984).
NOTE: Data are from a national probability sample of Anglo and Black respondents. Southern California respondents resided in Los Angeles and San Diego.

Focusing on the issue of undocumented immigration, 79 percent of Anglo and 66 percent of Black residents felt that undocumented Mexican workers took jobs away from native workers. And 59 percent and 35 percent of Anglos and Blacks thought Mexican Americans did not try hard enough to learn English.

It might very well be that there are minority-majority and interminority hostilities, with the former possibly being greater. What still must be determined is the degree to which the populace at large distinguishes between a variety of intragroup statuses: ethnic versus immigrant, new immigrant versus old immigrant, documented alien versus undocumented alien.

**TABLE 3.11 Indexes of Dissimilarity for Los Angeles Unified School District: Fall 1966 to Fall 1978**

| | Anglo versus | | | Blacks versus | | Hispanics versus |
|---|---|---|---|---|---|---|
| | *Blacks* | *Hispanics* | *Asians* | *Hispanics* | *Asians* | *Asians* |
| 1966 | 91 | 66 | 67 | 84 | 76 | 59 |
| 1967 | 91 | 65 | 67 | 85 | 76 | 59 |
| 1968 | 91 | 65 | 65 | 85 | 77 | 57 |
| 1969 | 90 | 64 | 65 | 85 | 78 | 58 |
| 1970 | 89 | 64 | 65 | 85 | 78 | 57 |
| 1971 | 89 | 64 | 65 | 85 | 78 | 57 |
| 1972 | 87 | 64 | 60 | 83 | 76 | 56 |
| 1973 | 86 | 64 | 61 | 82 | 76 | 56 |
| 1974 | 84 | 65 | 60 | 80 | 75 | 56 |
| 1975 | 83 | 65 | 58 | 80 | 76 | 56 |
| 1976 | 81 | 66 | 57 | 78 | 75 | 55 |
| 1977 | 77 | 66 | 55 | 76 | 73 | 56 |
| 1978 | 71 | 62 | 50 | 73 | 70 | 54 |
| Average Change 1966-1977 | −1.3 | 0.0 | −1.1 | −0.7 | −0.2 | −0.3 |
| Change 1977-1978: | −5.8 | −4.0 | −5.0 | −3.0 | −3.1 | −1.7 |

SOURCE: Farley (1979).

Yet another way to approach intergroup isolation is to examine public school segregation. Since 1954 the tolerance of Anglos for racial desegregation of public schools has served as a useful barometer in evaluating mainstream views about non-Anglo groups. There are published data on the level of isolation experienced by minority students attending public schools in the city. These data are particularly informative because they span a period when the school district implemented a variety of desegregation programs. Therefore we can ask: To what extent have minority students become more or less integrated than the population as a whole?

In the Los Angeles Unified School District, segregation can still be found throughout the system. In 1977, for example, fully 62 percent of minority students in elementary attended schools that had 90 percent to 100 percent minority enrollment; for junior and senior high schools the comparable figure was 51 percent (Rabinovitz, 1978). As with the residential population, student segregation also differed by ethnic/racial group: 25 percent of Asians, 54 percent of Hispanics, and 82 percent of Black students attended schools where the Anglo enrollment was less than 10 percent (Rabinovitz, 1978).

Between 1966 and 1977, the district's desegregation efforts were entirely voluntary. During this time there was a decline in non-Anglo segregation, but the pace was slow. The average yearly decline in non-Anglo/Anglo segregation was a scant 1.3 percent for Blacks, 1.1 percent for Asians, and less than ! percent for Hispanics. One year after the 1978 inauguration of court-mandated desegregation policies, the average non-Anglo/Anglo segregation level declined by an additional 5 percent. For the observed period, there were small gains made in non-Anglo/Anglo student desegregation. Yet despite the implementation of numerous integregation programs over a thirteen-year period, Hispanic and Asian students appeared just as segregated as their nonstudent counterparts (compare Tables 3.4, 3.8, and 3.11). The 1978 ID score for Black students is about 10 percent lower than the 1980 ID score for the entire Black population. Thus only the most segregated student population made gains in desegregation.

What was the response of Anglos to increasing minority enrollments (especially of immigrants) and greater pressures to integrate? One response was to leave the school district.

Prior to the involuntary integration policies adopted by the district the average ethnic/racial change in annual enrollment was -5.7 percent for Anglos, 6.7 percent for Hispanics, 0.6 percent for Blacks, and 4.3 percent for Asians. During the first year of court-imposed integration policies, the non-Anglo groups experienced changes that were, more or less, in line with their rates recorded for the previous year. However, Anglo student enrollment declined by 15 percent.

Taking into account the differential ethnic/racial growth rates in enrollment, Farley (1979) estimated the magnitude of "Anglo flight" that may have been induced by the inauguration of court-ordered integregation plans. He concluded that during the 1977 academic year, as many as 5 percent of the Anglo student population fled the public school system in anticipation of expanding integration policies. And an additional 7 percent of the potential 1978 Anglo enrollment left before the first year of the mandated desegregation program. The drop in Anglo enrollment for schools actively participating in desegregation activities was 30 percent. For nonparticipating schools the comparable change rate was 8 percent.

Ultimately, the majority response to school desegregation was effective resistance. By 1982, the mandatory policies had been legislatively dismantled.

The school desegregation case in Los Angeles exemplifies the importance of our summary comments. First, there are multiple forces at work that help to make ethnic/racial segregation the status quo in U.S. metropolitan areas, and these forces include both ecological and nonecological factors; that is, certain population populations changes can be expected as a neighborhood ages, but preferences and organized opposition to perceived changes can promote or deter the process of invasion or succession by new out-group members. Second, research on urban ecology must adopt a flexible multiethnic perspective. As Crain (1978) states: "Desegregation in Los Angeles is made more complex by the presence of native and foreign-born Mexican Americans, immigrants from other Hispanic countries, American Indians and Asian Americans, indigenous and from abroad." Future research on the centralization of immigrant communities and the reproduction of ethnic/racial segregation in the suburbs should consider these points.

TABLE 3.A1 Description of Demographic Measures

| *Index* | *Equality* | *Description* |
|---|---|---|
| Index of Dissimilarity | $ID = \frac{1}{2} \Sigma/(H_i/H) - (B_i/B)/$ | where $H_i$ and $B_i$ are the population subtotals of two ethnic categories in the i-th areal unit, and H and B are the population total of each group (i.e., $H = \Sigma H_i$ and $B = \Sigma B_i$). The result is multiplied by 100. The ID can be interpreted as the percentage of either group that would have to move in order to elominate segregation between the groups and therefore produce an ID score of zero. |
| Replacement Index | $RI = 2q(1-q)\ ID$ | where q equals the proportion of the numerically smaller group (i.e., if $B < H$, the $q = B_i/B$). The result is multiplied by 100. The RI can ne interpreted as the percentage of the total population ($H + B$) that would have to move to produce an ID equal to zero if both groups relocated to areal units where they were under represented. |
| Heterogeneity Index | $HI = 1 - \Sigma(H_i/T)(H_i - 1/T)$ | where $H_i$ is a vector containing each ethnic subtotal and T is the total population figure for a specified areal unit. The result is multiplied by 100. The HI can be interpreted as the likelihood that two residents selected at random are not of the same ethnic category. |

**TABLE 3.A2** **Distributions of the Foreign-Born Population, by Year of Immigration for Selected U.S. Counties: 1980 (in percentages)**

| *Year of Immigration* | *Los Angeles* | *Orange* | *San Francisco* | *New York*[a] |
|---|---|---|---|---|
| 1975-1980 | 34.8 | 36.3 | 30.5 | 19.7 |
| 1970-1974 | 22.2 | 17.1 | 16.2 | 17.8 |
| 1965-1969 | 13.0 | 11.7 | 12.9 | 15.5 |
| 1960-1964 | 8.8 | 10.7 | 9.1 | 9.0 |
| 1950-1959 | 9.6 | 12.8 | 12.3 | 11.7 |
| Before 1950 | 11.6 | 11.5 | 18.9 | 26.3 |
| Total percentage | 100.0 | 100.0 | 100.0 | 100.0 |
| Total number | 1,664,800 | 257,200 | 192,200 | 2,046,400 |
| Percentage foreign-born | 22.6 | 13.3 | 28.3 | 19.6 |

SOURCE: U.S. Bureau of the Census (1983a, 1983b).

a. The New York part of the New York-New Jersey Standard Metropolitan Statistical Area.

**TABLE 3.A3** **Percentage Ethnic and Racial Distributions for Selected U.S. Counties: 1980 (numbers in thousands)**

| | *Los Angeles* | *Orange* | *San Francisco* | *New York*[a] |
|---|---|---|---|---|
| Anglo | 53.3 | 78.9 | 53.2 | 64.0 |
| Hispanic | 27.0 | 14.5 | 11.2 | 13.6 |
| Black | 12.6 | 1.3 | 12.7 | 19.3 |
| Asian | 6.1 | 4.9 | 22.0 | 2.7 |
| American Indian | 0.7 | 0.2 | 0.5 | 0.2 |
| Other | 0.3 | 0.2 | 0.4 | 0.2 |
| Total percentage | 100.0 | 100.0 | 100.0 | 100.0 |
| Total number | 7,477.5 | 1,919.5 | 678.9 | 10,673.7 |
| Heterogeneity Index | 63.3 | 35.3 | 64.1 | 53.4 |

SOURCE: U.S. Bureau of the Census (1983a, 1983b).

a. The New York part of the New York-New Jersey Standard Metropolitan Statistical Area.

**TABLE 3.A4 Educational and Income Attainments of Ethnic and Racial Groups in Los Angeles County: 1969-1980**

| | *Median Educational Attainment* | | *Median Family Income (dollars)* | |
|---|---|---|---|---|
| *Ethnic* | *1970* | *1980* | *1969* | *1979* |
| Anglo | 12.4 | 12.4 | 11,791 | 23,217 |
| Hispanic | 9.3 | 9.7 | 8,466 | 15,531 |
| Black | 12.0 | 12.1 | 7,571 | 14,879 |
| Asian[a] | 12.8 | 12.8 | 13,768 | 23,676 |
| American Indian | 11.8 | 12.0 | 8,342 | 17,890 |

SOURCE: Crain (1977), U.S. Bureau of the Census (1983c).

a. 1970 data reflect Chinese and Japanese only.

QUESTION #2

Do you feel some kind of a Task Force or special ad hoc organization is required to establish certification standards for languages other than Spanish?

At first glance, the formation of a National Task Force or any other similar ad hoc organization seems well-intentioned. However, a more thorough examination will show the Task Force to be not only unnecessary but structurally and fiscally unsound. The Task Force is:

1. Unnecessary

There is an extant office in the AO that has proven itself capable of creating cost-effective committees that can validly attend to any legitimate task proposed by this or any other legislation concerning languages services in federal courts. The Office of Court Reporting and Interpreting of the Administrative of the U.S. Courts has performed a tremendous task with affordable resources by creating valid standards for interpreter certification and by revamping the quality and use of interpreters in federal courts. Mr. Jon Leeth's conscientious and outstanding efforts should, if anything, serve as a model for policy change implementation. Mr. Leeth's greatest contribution is his finding the best people both nationally and globally and focusing their assembled expertise on the task at hand.

The current certification instruments for Spanish/English court interpreters derived from a series of interdisciplinary task forces convened by Mr. Leeth. The lack of successful appeals since implementation of certification contesting Spanish/English interpretation in the federal courts evidences the success of AO task forces and committees in developing an examination which accurately measures appropriate language skills of the masterful court interpreter. These same processes and examinations stand at the forefront of knowledge in interpretation and testing. Thus, it seems logical that the AO can duplicate its efforts in developing examinations in languages other than Spanish and to resolve any issues this amendment legislates

2. Superfluous

S. 1853 mistakenly assumes that each new language to be certified needs its own standards. This is simply not the case. Certification standards already exist, having been created by the original Task Force implementing the 1978 Court Interpreters Act. Moreover, these standards, based on research, apply to all languages. Other languages to be certified will follow the same philosophical, methodological, and administrative models already developed and tested for the Spanish examination. Therefore, one might ask what does this proposed National Task Force purport to consider? According to the bill, the Task Force it would dedicate itself to the following untenable issues:

a) supervision of interpreters on the job (after spending millions to certify, millions more to monitor?)

b) feasibility of translator certification

c) increasing fees for interpreters

These tasks and others do not merit a $1,000,000 investment.

Another questionable feature of the Task Force is that is has a continous membership, while what in fact are most needed for developing certification examinations are a number of test-development committees of specialists. For example, the Navajo certification test would require the presence of a leader of the Navajo nation, a justice of the tribal court, a practicing Navajo interpreter, a Navajo language specialist, and two or three experienced test-development specialists. This group would dissolve when its task was complete; the group, or part of it, would reassemble if other tasks or issues related to Navajo surfaced. Likewise, a Mandarin certification exam would call for a group of Mandarin language experts, a practicing Chinese interpreter, a Mandarin conference interpreter, and two or three test-development specialists. Thus, there is no valid reason to maintain an ongoing full-time salaried National Task Force. No single committee could ever attend to all these tasks.

3. Structurally Unsound

As I mentioned in my testimony of February 25, 1986, enlightened policy making depends on an interdisciplinary approach. However, the proposed Task Force is vehemently intradisciplinary. The intra- rather than inter- disciplinary composition of the proposed National Task Force only serves to promote the division of practitioners and academicians in direct contrast to the AO's successful integration of these two groups in implementing the 1978 Act. The principal danger here is that the agenda of practitioners will vastly overshadow the more global issues of interpretation needs at all court levels and the ramifications of policy change. The focus could well shift from national-policy decision-making to guild-oriented interests such as pay increases and the development of fiscal and political empires.

The structure of this proposed Task Force and its agenda is predicated on the hypothesis that court interpreters are the only "repositories" of knowledge about the needs of limited- or non-English-speaking persons or of the hearing impaired--a patently false hypothesis. As specified in the bill and delineated in Ms. Etilvia Arjona's testimony, the Task Force will exclude (save for one federal judge) all who are not interpreters. Yet the tasks to be undertaken by the Task Force clearly involve research and measurement problems which call for refined skills in the following areas:

--measurement
--program evaluation
--data collection
--data analysis
--legal and policy evaluation
--survey development
--cost-benefit analysis
--test design
--validation and reliability studies
--feasibility and demographic analysis
--statistical procedures
--discourse analysis
--register analysis
--language-complexity analysis

Suggesting that interpreters might assume all of these related tasks is as absurd as asking a researcher to interpret. A true interest in the due process rights of limited-English speakers people would preclude this unprofessional approach, which may result in invalid examinations and detrimental policies.

Also, I cannot sufficiently stress the dangers of allowing members of a profession to control entry into that very profession--a system which the S. 1853 National Task Force would promote. Justifiable litigation would derive from interpreters denied certification; these individuals would have a strong basis for a legal suit inasmuch as the examinations excluding them would have been the products of those wholly unfamiliar with test construction and validation but who have vested interest in maintaining a limited interpreter elite.

Indeed, if such a group as that one proposed by S. 1853 had created the first Spanish/English examination, the government would not have survived the challenge brought by Seltzer v. Foley. 502 F. Supp. 600 (1980) (See Appendix I for Findings), a case brought by two interpreters who had failed the written portion of the Spanish/English examination and who charged that the exam assessed inappropriate skills and was thereby not pertinent. The Honorable Judge Milton Pollack of the Southern District of New York, who presided over this case, based his favorable findings for the AO not on the suppositions of interpreters but on the basis of solid research and evaluative procedures of linguists, psychometricians, and their interactions with practicing interpreters and linguistic data.

My final concern with the structure of this Task Force is this: From a purely numerical standpoint, I question the criteria used to designate the Supervisors of Interpreters for the U.S. District Court, Southern District of New York, as the Chair of the Task Force. Several U.S. district courts in the country have far greater frequency of occurrences of interpreters than the Southern District of New York: the Southern District of Florida, the Western Southern Districts of Texas, the Southern District and Central Districts of California, and the District of Puerto Rico.

There are supervisory and staff interpreters who have designed elaborate inservice training programs, who have published well-respected materials for court interpreter training, and who have pioneered court interpreter education programs that limited as they are have significantly upgraded the quality of interpreter services in the courts.

I suggest that criteria be formulated that takes these features into account in the selection of a chair if such a Task Force is seriously entertained.

4. Wasteful

The proposed Task Force would not only threaten the objectivity and high standards of the certification process mandated by the 1978 Act but represents an elaborate plan to create yet another costly bureaucracy, during times when even indispensable human services are being cut, such as aid to the elderly and numerous other critical services. To spend $1,000,000 to carry out tasks that could be more expediently, validly, and economically accomplished through an existing office defies reason and invites comment. The costs the bill specifies for this Task Force include:

--a full-time Director for one year at GS-18:$64,000 plus $12,000 benefits = $76,000
--seven half-time appointed interpreters at $32,000 plus $ 53,000 benefits = $277,000
--an unlimited staff, $75,000 (including benefits)
--unlimited consultants, 100 days at $260 per diem x 10 = $260,000
--travel airfare = $25,000

NATIONAL TASK FORCE GRAND TOTAL = $1,110,000

One million dollars could sufficiently fund the extension of court-interpreting services to the grand jury and extend certified interpreters to the Immigration and Naturalization Service and to the Social Security Administration for an entire year--or fund the development and administration of certification examination in at least three languages.

## CONCLUSION

Since the AO has succeeded in treating issues of certification and developing valid examinations, I conclude that it should continue on its present course. With additional reasonable resources, the AO can continue to excel in setting a world standard in ensuring basic human rights through language. To legislate the establishment of a $1,000,000 National Task Force outside the aegis of the AO would be a waste of taxpayers' money.

## APPENDIX 1

Buchwald & Kaufman, New York City by Don D. Buchwald, New York City, for plaintiffs.

John S. Martin, Jr., U. S. Atty., S. D. N. Y. by William Hibsher, Asst. U. S. Atty., New York City, for defendants.

MILTON POLLACK, District Judge.

The plaintiffs seek a declaratory judgment and an injunction against the Director of the Administrative Office of the United States Courts to prevent him from certifying Spanish/English interpreters for the United States Courts on the basis of the written examinations he utilizes to determine the qualifications of applicants for such certification. The nub of plaintiffs' claim is that the examination administered, tests applicants on language proficiency unrelated to anything encountered normally in a courtroom by bilingual interpreters, uses inaccurate and invalid criteria and fails to take into consideration the statutory obligation to consider "education, training and experience". Plaintiffs, two independent consultants, who have for many years performed Spanish/English interpreting services to the satisfaction of judges and lawyers, have taken the written examination twice and failed to pass it.

An application for a temporary restraining order was denied on November 14, 1978 and a hearing for a preliminary injunction as well as a trial of the merits has been held.[1] The Director presented evidence which established that the test was soundly formulated by experts, suitable for the statutory purposes sought to be achieved and rationally related thereto and fairly administered; that in carrying out his statutory mandate under the Court Interpreters Act of 1978, 28 U.S.C. § 1827, *et seq.*, his procedure was neither arbitrary nor capricious.

At the conclusion of the hearing and trial, the Court made basic findings of fact pursuant to Rule 52(a) on the substance of the claims and denied the requested injunction and ordered the complaint to be dismissed and judgment entered pursuant to Rule 58, leaving it to a later supplement and opinion to be filed to deal with other matters.

### *Jurisdiction*

At the threshold, the Director moved to dismiss this suit for lack of subject matter and personal jurisdiction. The relief sought herein is neither certification nor money damages, but only a declaration that the Director's actions have not comported with the statute, an injunction undoing the certifications made to date under the examinations conducted and a mandatory injunction to establish a new certification program in conformity with the Act.

[1, 2] Judicial immunity and sovereign immunity urged by the government against proceeding with this suit, appear to be inapplicable concepts here. There is no real interference with or questioning of any judicial function or act. Moreover, even as to judges, it has been held in numerous cases, that immunity does not extend to injunctive relief. *Person v. Association of the Bar of the City of New York*, 554 F.2d 534, 537 (2d Cir. 1977). Sovereign immunity has two exceptions which could apply in this case if the terms of the complaint could be factually sustained. "Those exceptions are (1) action by officers beyond their statutory powers and (2) even though within the scope of their authority, the powers themselves or the manner in which they are exercised are constitutionally void." *Dugan v. Rank*, 372 U.S. 609, 620, 83 S.Ct. 999, 1006, 10 L.Ed.2d 15 (1962).

[3, 4] Plaintiffs' allegations in the complaint that a government official had acted unconstitutionally to deprive them of a liberty interest and of procedural due process, thereby raised a substantial federal question within the subject matter jurisdiction of the federal courts. 28 U.S.C. § 1331

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[1] Pursuant to Fed.R.Civ.P. 65(a)(2) the Court ordered the trial of the action on the merits to be advanced and consolidated with the hearing of the application.

(Supp.1980); *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946).[2]

The government further contended that there is an absence of personal jurisdiction over the Director and that 28 U.S.C. § 1391(e) does not avail plaintiffs herein to establish the Southern District of New York as a permissible venue for this suit. The government relied by analogy on *Liberation News Service v. Eastland*, 426 F.2d 1379, 1384 (2d Cir. 1970), a suit against 10 United States Senators and the Senate Committee's Chief Counsel, none residents of New York. The Court of Appeals concluded that Congress intended Section 1391(e) to apply only to the executive branch. The Court stated:

> [T]he officers and employees of the United States who were made reachable by § 1391(e) were the same types of officers or employees who could be compelled to perform a duty to the plaintiff under § 1361. (*Id.* at 1384).

The government argued that this holding that Section 1391(e) is inapplicable to congressional officials applies also to officials of the judiciary as was held by the Fifth Circuit in *Duplantier v. United States*, 606 F.2d 654, 661 (5th Cir. 1979). In that case a suit was dismissed for lack of personal jurisdiction as to the Judicial Ethics Committee of the Judicial Conference, Judge Edward Allen Tamm, the committee chairman and clerks of all United States courts, on the ground that Section 1391(e) is inapplicable to such judicial personnel who were performing a "judicial administrative function".

The response of the plaintiffs to the holding in *Duplantier* was two-fold. They called attention to the fact that the Fifth Circuit nonetheless permitted the suit to be continued against the United States and the Attorney General for a ruling on the merits. Plaintiffs said that a ruling rejecting personal jurisdiction under § 1391(e) "would likely be fatal to plaintiffs' lawsuit because plaintiffs' limited resources make pursuit of the action in Washington unlikely."

The second point made by plaintiffs on the issue of personal jurisdiction was that the role of the Director and his office is purely administrative and non-judicial.

It cannot fairly be urged that we are not dealing with an arm of the judiciary. The office of which Mr. Foley is the Director is the "Administrative Office of the United States Courts"; it was so constituted and entitled by the Congress, 28 U.S.C. §§ 601, 604. The interpreters who are to be certified by the Director are to be used "in courts of the United States". 28 U.S.C. § 1827(a). The interpreters certified are not divorced from direct involvement in the disposition by the courts of their judicial business. Clearly the Director is called upon to perform a judicial administrative function in certifying interpreters for the disposition of judicial business by the federal courts, in the same sense of judicial administration that the designee of the Judicial Conference of the United States, Judge Tamm, performed his function in developing reporting forms and promulgating necessary regulations and receiving the financial reports of members of the federal judiciary, pursuant to the Ethics in Government Act of 1978, 28 U.S.C.App. I, § 301 *et seq.*

The objection of the government of lack of personal jurisdiction of the Director was, during the trial, withdrawn and waived but solely for the purposes of this suit and without prejudice in any other matter.

### *The Propriety of the Certification Procedure*

Plaintiffs' challenge to the Court interpreters certification procedure falls into three areas:

(1) they attack the decision to screen out candidates based on the first part of the test, the written proficiency test;

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[2] Plaintiffs' claims of jurisdiction under the Tucker Act, 28 U.S.C. § 1346(a)(1)(2) (Supp. 1980) are misplaced; that statute does not authorize claims for anything other than money damages. Likewise, their claims to jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361 will not serve to authorize this suit. Those statutes apply to matters arising in the executive branch and its administrative agencies.

(2) they attack the written examination itself as designed to test archaic and esoteric matters that do not confront bilingual interpreters in federal court proceedings; and

(3) they assert that certain individuals improperly received preferred treatment and status.

### *The Statute Involved*

Passed in 1978, the Act sought to systematize the selection and appointment of Court Interpreters and directed the Administrative Office to devise a certification procedure;

> (a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.
>
> (b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

28 U.S.C. § 1827.

The procedure which the Director followed in prescribing, determining and certifying the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings was substantially the following.

Mr. Jon Leeth, the Chief of the Court Interpreters Unit of the Director's office, undertook a broad scale study of the problem of interpreting needs of the federal courts. The purpose was to identify the manner in which interpreting was being conducted, the capabilities in use, the needs of the federal courts in this regard and how to qualify persons to fill those needs.

Mr. Leeth visited with about 80 persons including: Chief Judges of federal courts; the leaders, presidents and vice presidents of the major interpreting associations in the United States; people in the professional interpreting departments at the Department of State, United Nations; and directors of interpreting programs of various universities around the country. He interviewed State of California officials who were developing tests for interpreters and met with representatives of the City of Los Angeles to see what kind of tests they had.

A point that emerged from these interviews was that there was a mistaken belief abroad that if one was bilingual he or she could interpret; but that just does not follow.

The other thing discovered was that judges insisted that the people to be certified should be able to render what is said in the court as it was said, not to short-circuit what was being said or to change the level of the language that was being used; that it was not the role of the interpreter to simplify the language of the courtroom to a level *believed by the interpreter* to represent the level of a witness' understanding.

He found as he did job audits and interviewed interpreters that in fact many interpreters believed that they should short-circuit the judicial proceedings; that it is their job to make certain that the individual for whom they are interpreting understands what is being said and that if the lawyers and Judges use elaborate vocabulary, they were to reduce it to very simple terms so that a peasant, for example, could understand. Another thing he found on his job audits was that many interpreters simply do not have the command of the language, either Spanish or English, to know what is being said in the courtroom. Not knowing English they couldn't get it across in Spanish. He sat in one magistrate's courtroom in Texas where the interpreter completely changed the motive of the accused although she had no idea that she was changing his motive; but she didn't know what he said.

Mr. Leeth also found that interpreters were asked to do a very difficult job and were not remunerated for the kind of effort and skills and abilities that they had to have. Mr. Leeth recommended to the Director that he approve an upgrading of interpreting jobs from Grades JSP 5, 6 and 7 to JSP 10, 11 and 12 which while it didn't quite double the salary it did increase it considerably and put employed interpreters on the same level as the State Department and international interpreting.

In the course of the study, six outstanding professional people were identified and enlisted to help the Director set up a proper test for language proficiency and oral interpreting skill, namely:

1. Dr. Roseann Gonzalez a professor of English at the University of Arizona who had done a PhD dissertation on the level of language used in courtrooms. She made an extensive examination of transcripts of court proceedings and had analyzed them in a major study of the language used in the courtroom.
2. Dr. Maria Theresa Astiz, a professor of Spanish at the State University of New York, who is also a former interpreter for the United States Department of State and who has done intensive study of court interpreting throughout the United States at the local, state and federal levels.
3. Etilvia Arjona, who is a graduate of the Geneva School of Interpreting, an ex-director of the Monterey Institute's Department of Interpreting and Translation which is the only school in the United States that gives a Master's Degree in interpreting and translation; she is now a PhD student at Stanford University in Education and Testing.
4. Ellie Weinstein, the President of the California Court Interpreters Association, who for 15 years has been a practicing court interpreter in the Superior Court System in Los Angeles.
5. Alvaro Galvan, who is the head Spanish/English interpreter at the Organization of American States.
6. Dr. Eugene Briere, a professor of Linguistics at the University of Southern California and a specialist in setting up these kinds of tests; he has done a major analysis of the Miranda Rights language.

This team was brought to Washington for a two week conference at which it was decided that a test was needed. The test would have to indicate a good vocabulary, wide range for criminal and civil cases; actual interpreting skills; and an ability to interpret with precision and in such a manner that the style and the tone of the language that was being used in the court could be conserved without changing the meaning of what was going on. Test words were taken out of actual trial transcripts. Vocabulary lists that the California Court Interpreters Association had prepared for their members to study from in anticipation of the State of California test were studied and selections made therefrom.

A whole series of cases had been brought to the conference together with reference material, text books, language guides and word frequency books to determine the level of difficulty of the words that were taken out of the transcripts so that the conferees could match and make equally difficult words on the test. Dr. Gonzalez' study had shown that it was necessary to have a minimum of 14 years of education (equivalent to 2 years of college) to understand what goes on in a criminal trial and they all believed that it was necessary to have more than that to understand what goes on in a civil trial.[3]

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[3] The language level in the courts is high due to the fact that lawyers, expert witnesses and judges represent groups of professionals who have had at least 15 to 20 years of formal classroom education. This calls for interpreters with an essential comprehension at the college level of language proficiency and precision in each language.

After the group had finished developing a proposed test three judges came to review it with them: Judge Rinaldo Garza of Texas, Judge Juan Perez Gimenez of Puerto Rico, and Judge Jose Gonzalez of Fort Lauderdale. They were shown what had been done and why it had been done and the judges were asked whether the conferees were on track and going where the judges wanted them to go and they all replied "yes". One of the judges commented that "this is good and if interpreters don't pass this test they should not be in my courtroom".

All of the consultants who are specialists in test development said that a pilot test would have to be run for the result produced. The group wanted to pilot test it around the country so that they would have people who had different backgrounds in Spanish taking the test. Accordingly, they went to the southwest, to Texas, to Los Angeles, to Chicago, came to New York and went to Miami to have people take the pilot test.

Twenty-four people participated in the pilot test. They were requested to answer every question and make any comments they wanted about each item and furnish their global assessment of the test. The test was open-ended without a time limit on it because for statistical analysis the group wanted to be sure they answered the questions and wanted their comments on every question.

The results of the test were then shipped to the University of Southern California where Professor Briere ran them through a computer for a statistical analysis to see how the pilot test had come out. For validity and reliability purposes the statistics were very good and better than one would expect on a first run of a test of this kind. The test had an English section and a Spanish section each of which had five parts to it: antonyms, synonyms, a sentence completion section, a reading comprehension section, and a language usage section to test those things that the experts said were needed to gauge language proficiency.

As a result of the analysis of the pilot test responses, the questions were revised and improved. Thereafter the whole group of people mentioned above met in Brownsville, Texas to work on the oral portion of the test and there were added to the group. Theodore Fagen, Chief Interpreter of the United Nations, and Dr. David Gerver, who was from the University of Stirling in Scotland; he had done major work identifying interpreter aptitudes.

It was thought that for practicality of testing on the oral examination that it would be done in a simulated courtroom format. Trial transcripts were obtained from the archives in Brownsville and sections were taken out that would determine whether a person could handle the frozen language that occurs in court, the formal language, the slang, and the colloquialisms. A charge to the jury and an opening statement by defense counsel were utilized.

Dr. Astiz and Mrs. Arjona and Judges Gonzalez and Perez Gimenez wrote the direct testimony, the direct examination and cross-examination questions that would be in a courtroom format. Simulated probation reports were prepared and used. Dr. Carlos Astiz wrote a power of attorney and these were used as testing instruments to see if the person in fact had skills in interpreting in addition to having the vocabulary needed.

One of the interesting things that was done in the oral tests was to develop a way for the first time in interpreter testing to objectify a scoring system for interpreters. Every other test that had been heard of for interpreters was just a subjective reaction of a panel to how the person did, but this group wanted an objective portion and that was put in. A subjective part was also put in. This covered: how adaptable is the person to the language used; how well does the interpreter deliver the material that the interpreter is hearing; what is the level of fluency and pronunciation: it was all graded pass-fail.

Each candidate was reviewed by a panel of three people; an active court interpreter as a peer rater; a specialist in the Spanish language; and an international conference interpreter for interpreting techniques.

> "A person who is a fiduciary with respect to a plan by reason of rendering investment advice for a fee ... shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control, or discretionary responsibility ... does not render investment advice for a fee, and does not have any authority or responsibility to render such investment advice. ..."

A fair reading of the above regulation suggests that a fiduciary is liable for consequences flowing from his investment advice, but not from problems unrelated to that advice. This regulation appears to create broad fiduciary liability only when investment advice is rendered on a regular basis, thereby vesting the advisor with an unusual amount of control over the fund. *See generally*, Weiler, *Fiduciary Provisions of the Employee Retirement Income Security Act of 1974*, 36 La.L.Rev. 897, 908 (1976).

[2] The preceding discussion demonstrates that since no connection was alleged between the Bank's advice and the harm caused by Grounds' conversion, the Bank is not liable for any breach of duty under ERISA. Accordingly, the Bank's motion to dismiss Count III is granted. It is so ordered.

**Norma SELTZER and Margarita Torres-Cartagena, Plaintiffs,**

v.

**William E. FOLEY et al., Defendants.**

80 Civ. 6496(MP).

United States District Court,
S. D. New York.

Dec. 8, 1980.

Action was brought for declaratory and injunctive relief against Director of the Administrative Office of the United States Courts to prevent him from certifying Spanish-English interpreters on the basis of certain written examinations. The District Court, Milton Pollack, J., held that: (1) action was not barred by judicial immunity or sovereign immunity, and (2) tests given by the Director were in all respects reasonable and not beyond his statutory power nor an abuse of discretion.

Order accordingly.

**1. United States ⇐125(17, 18)**

Neither judicial immunity nor sovereign immunity barred action seeking declaratory and injunctive relief with respect to determination of the Director of the Administrative Office of the United States Court to use particular tests for Spanish-English interpreters in the courts.

**2. Judges ⇐36**

Judicial immunity does not extend to injunctive relief.

**3. Federal Courts ⇐974**

Tucker Act does not authorize claim for anything other than money damages. 28 U.S.C.A. § 1346(a)(1, 2).

**4. Administrative Law and Procedure ⇐663**

**Federal Courts ⇐11**

Administrative Procedure Act and Mandamus and Venue Act apply to matters arising in the executive branch and its administrative agencies and did not provide a basis for exercise of jurisdiction in an action brought against the Director of the Administrative Office of the United States Courts. 5 U.S.C.A. § 701 et seq.; 28 U.S.C.A. § 1361.

**5. Courts ⇐56**

Tests given by the Director of the Administrative Office of the United States Courts for certification of Spanish-English interpreters in the courts were reasonable and not beyond his statutory powers nor an abuse of discretion.

The names of these raters were obtained through the State Department, the test development team and others who were helpful.

A group of 15 test raters was assembled and they were trained for three days in how to apply the oral test so that everybody would be tested exactly the same way throughout the United States.

The written and oral tests were then administered to the candidates for certification and the people who passed the tests were recommended to the Director for certification.

Some on the certification list took neither the oral test nor the written test nor the pilot written test. But those were people who helped develop those tests, had been professional interpreters with the Department of State, or graduated the Geneva School of Interpreting, or were professionals with the United Nations or the Organization of American States. Each of those who was certified had qualifications at least equivalent and probably superior to the level of certification.

It will be useful to detail here also, some of the testimony of Professor Roseann Duenas Gonzalez, another member of the team of experts engaged to develop the examination for certification status.

Dr. Gonzalez is a professor of linguistics and teaches applied linguistics at the University of Arizona where she is the Director of the Graduate Program. Her doctoral dissertation was on the subject of the courtroom register of English, a work that she was commissioned to do beginning in 1975 by the Superior Court in Tucson, Arizona. Her project was to come up with an instrument that would test the English language proficiency of a defendant in the justice system and also to find the appropriate time when to test a defendant's knowledge of English so that an interpreter could be called at the right times so that he would have total due process. Dr. Gonzalez found that the language of the law was not common everyday English and that it was something unto itself.[4]

This idea of the language of the law is an old idea. Courtroom language is something unto itself; English is not the official language of the court and this is what she began studying; what exactly are the parameters of courtroom English. Her study is the first to have looked at it in a very objective way.

She looked at transcripts of records from the Superior Court in the criminal field and covered a group of more than 10,000 words which she looked at for vocabulary, the difficulty of the vocabulary, its complexity, its breadth, and the precision of the kind of vocabulary that was used in the courtroom area. She looked at courtroom language from the point of view of readability which is a study of the complexity of the concepts of the language that takes into consideration the syntax, the structure and the complexity of the vocabulary. She also looked at courtroom language according to what kind of structure was used, the verbs, the circumlocutions, the indirect use of language and other idiosyncracies.

Her conclusion was that it was appropriate to talk of courtroom language as a separate register of English, a separate brand of English which had its own characteristics, its own set of vocabulary which repeated through many, many transcripts. It has an overall difficulty level, according to her readability study, of the fourteenth grade which means that a person has to have competence of understanding language, an intellectual understanding of the fourteenth grade level which is a sophomore in college level.

Dr. Gonzalez used a readability formula called the Yoakam formula, to measure the complexity of language of textbooks so that when she measured the complexity of the language in the courtroom sample that she studied it came across the board as fourteenth grade.

She emphasized that the important thing to remember is that we are not just talking about the ability to comprehend the language at a minimal level but to comprehend it to the point where the interpreter would be able to give a meaningful, accurate equivalent of that language, conserving the language level, style and tone.

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[4] Dr. Gonzalez had found that words used in simple hearings never appeared or appeared three times or less in a normal million words of print.

Dr. Gonzalez emphatically rejected the notion that an interpreter's role is to simplify the fourteenth-grade language used in the courtroom so that a defendant who does not have a fourteenth-grade education can understand it.

Describing the Washington conference of the experts she testified that they came to the distillation of what is the function of an interpreter, how best to test it, a decision to have a two-part examination and each part was to have equal importance. The first part had to be a written examination because they had to get at the basic command that a person has of both languages and that was where her work really came into play. In the choosing of the vocabulary, the reading passages were geared to the fourteenth grade level. She has worked continually on college board examinations and educational testing service and the level mentioned is not considered to be a very rigorous examination of language. It is basic command of language, vocabulary and reading. The reading passages are in the test because there is a very high correlation between the ability to extract information from a reading passage and the proficiency of one's language. So when the antonym and synonym and sentence completion sections were chosen the group constantly had in mind this readability level.

The experts selected 23 out of 48 English words from her list compiled from courtroom records.

Those who were involved in the preparation of the test had made up enough tests so that the content validity and the face validity of the test prepared vindicated their expertise and established it to be a good test of what it was wanted to measure.

When the three judges mentioned previously spoke to the group they emphasized that the interpreter had to have precision in language and in order to have this a person had to have a wide range of vocabulary and had to have the subtleties and the nuances of the language really down pat.

The pass-fail score was determined computationally at the point where the minimal competency should be drawn. That happened to be lower than what the group of experts intuitively felt should be the cut-off point but they went along with the lower figure. It was a computational analysis based on standard deviation.

Dr. Gonzalez called attention to one of the greatest misperceptions that there is in this whole field. That is that if a person is bilingual it is believed that that person is able to interpret. She gave examples of experiences in Arizona and New Mexico where janitors were called into the court to interpret; where secretaries of judges or clerks of libraries were called in to interpret; and that, she explained, was the problem with the justice system and why it was necessary to have this certification process. Dr. Gonzalez pointed out that language competency is not a static monolithic entity. Language competency is a developing area, a knowledge that unless it is developed can stagnate, or can stay at the same level. And so when a person has daily expanded his or her language ability, learned more precise vocabulary, learned more nuances and subtleties of language, then, this kind of training and learning and experience and education is reflected most definitely on a proficiency test of their language command and their language.

Counsel for plaintiffs viewed the Court's function in this case to be the determination of the Director's reasonableness, not necessarily agreeing with every choice of question-his reasonableness in setting up the certification examination. It was testified by Dr. Gonzalez, that the experts employed here were of outstanding quality who had the expertise and who had the experience in writing these tests, people who were Geneva School graduates. "You just don't find people like that. I think there is one to a continent. You don't find people like that very often." To make the best test possible the Director had used the best possible input available; "they were the six best in the country," she said.

The other experts called by the government corroborated the opinions and advice given by Dr. Gonzalez and the procedures used by Mr. Leeth. They testified that the language used in the test that had been formulated was neither arcane, esoteric or archaic as charged by the plaintiffs.

It was further established that the test used for certification was evaluated before the test was given by a psychometrician who was entirely outside of the group of experts. Psychometrics is metrics from mathematical measurement; it is the psychology of measurement. The procedures in setting up the test were thus reviewed and found to be of the highest quality.

[5] The Court finds on the totality of the evidence that the tests given by the Director were in all respects reasonable and not beyond his statutory powers, not an abuse of his discretion and represented a constitutional exercise of those powers to achieve the use of interpreting personnel in the courts of the United States having language proficiency and oral interpreting skill.

The Court has heretofore filed basic findings hereon which are hereby supplemented and the foregoing shall constitute further findings pursuant to Rule 52(a) Federal Rules of Civil Procedure. (A copy of the findings previously filed is annexed hereto as an Appendix).

SO ORDERED.

## APPENDIX

## FINDINGS

### Made at the Close of the Trial
### December 2, 1980

THE COURT: I find and decide as follows on the substance of the claims herein, leaving it to a later supplement and opinion to be filed to deal with other matters presented, namely:

1. The examinations and the parts thereof in the content and manner in which they were given for certification of interpreters for the United States courts were fairly, reasonably and comprehensively developed and prepared under outstanding expert guidance, and properly, fairly and reasonably administered.

2. The said tests and/or the criteria used by the Director bore a rational and proper relation to skills appropriate, necessary and required for requisite precision interpretation by bilingual interpreters in courtroom settings and were valid and reliable in purpose and effect.

3. The written portions of the examination administered, tested candidates on language proficiency, rationally related to matter normally encountered in a courtroom by bilingual interpreters, and presented proper, reasonable, and valid criteria, and necessarily and in fact took into consideration the education, training and experience of courtroom interpreters, and of the applicants for certification as such under the statute being considered.

4. The objections to the written portion of examinations that have been asserted have not been shown to relate to the precision of the bilingual performance of interpreters heretofore used in the United States courts and elsewhere.

5. The forensic qualities and prior extended use in court of interpreters are not to be equated with the performance of precise interpretations of the meaning and level of the matter and of the individual being translated.

6. There was no improper or preferential treatment of any persons or improper selection of or undue advantages afforded to any candidate who was certified or tested under the statute for interpretative work, and the methods of rating of performance on the tests were fair, reasonable, and appropriate, and rationally related to the object thereof.

7. The certification program and the examinations therefor, devised and used, satisfied the express and implied terms and intent of the Court Interpreters Act of 1978, 28 U.S.C., Section 1827, et seq., and of the consideration to be given thereunder to the education, training and experience of persons seeking to qualify for the statutory certification.

8. The tests to which applicants for certification were subjected were neither arbitrary nor capricious in any aspect thereof.

[illegible]

APPENDIX—Continued

9. The Court finds the evidence of the government's witnesses to be credible and unimpeached.

The foregoing shall constitute the findings of fact required by Rule 52(a) on the substance of the claims herein, which will later be supplemented by findings on peripheral matters, and judgment thereon shall be entered pursuant to Rule 58, Federal Rules of Civil Procedure.

In view of the foregoing, the motion for a preliminary injunction is in all respects denied, and since only a narrow issue is here presented which would not involve the matters on which the plaintiffs' counsel has indicated he has not had the opportunity to address himself, there seems to be no further reason for the maintenance of this suit.

The complaint will accordingly be dismissed, without costs.

It is so ordered December 2, 1980.

## RESPONSE OF DR. ROSEANN DUENAS GONZALEZ TO WRITTEN QUESTIONS FROM SENATOR THURMOND

**I am concerned that the high fees proposed in this legislation to be paid to interpreters in federal court proceedings would act as a drain on the state court systems, where court interpreter fees are significantly lower. What would you suggest as a means of insuring that the state court systems are not adversely affected?**

I agree with the very astute observation of Senator Thurmond that the high fees (a $260 per diem) mandated in this amendment will have a considerably damaging effect on the state court systems. I view this as yet another generally unintentional yet potentially harmful ramification that sections of this amendment propose.

To approve this per diem rate for freelance federal court interpreters is to allow almost a 50% increase of the present federal per diem rate of $175. This inflationary increase would affect state court pay schedules since both state and federal courts typically draw from the same pool of interpreters. In most states, with rare exception, state and local court interpreters earn an average of $80 per diem--substantially lower than the present federal per diem rate. Current pay scales range from $0 in Del Rio, Texas--perhaps representative of a number of towns where judges still customarily call on their secretaries or bailiffs to interpret without remuneration--to the $84 per diem rate of New York and Arizona. There are exceptions of course; California is competitive with federal rates, while Washington, D.C. Superior Court interpreters actually earn more than their federal court counterparts. However, these are both rarities. These interpreters, many of them federally certified, are selected from a list of conference interpreters approved by the State Department and thus earn the State Department rates.

### ADVERSE AFFECTS ON STATE COURTS

This proposed pay increase would affect courts as follows:

1. Federal district courts, offering such high per diem rates, could easily lure the best interpreters--freelance or

staff--from state courts. It would become more profitable to work two days a week in federal court than five days a week in state court.

2. To compete, state courts would have to increase their per diems, which would, in turn, necessitate a corresponding increase for staff interpreters.

3. An increase in pay--through an upping of grade classification--for staff interpreters could spark resentment resulting in movements for more pay by other court personnel.

4. If compelled to compete with federal rates, state courts, which rarely employ interpreters because of already excessive costs, may be wholly discouraged from seeking interpreter services in the future.

## PROPOSED METHOD OF INCREASE TO AVOID ADVERSE EFFECTS ON STATE COURTS

Although an increase in pay to court interpreters is merited, an increase of 50% is inadvisable because of the ramifications delineated above.

To minimize these negative effects on state courts I propose the following: That the increase in pay to federal freelance interpreters be granted in increments, to allow state courts to adjust gradually and to avoid friction between staff and freelance interpreters.

## IMPLEMENTING THE PROPOSED METHOD

The method proposed above could be carried out by the federal government by setting the increments at x% per budgetary cycle until such pay reaches a set percentage. The increment rate should not be an arbitrary one, but should result from careful review by the AO of the fiscal implications of this increase.

## ADVERSE EFFECTS ON FEDERAL COURTS

Another question not addressed but which logically follows here is this one: What effect(s) would this mandated per diem have on the federal court interpreter system? At the mandated rate, federal court interpreters would have to work only 115 days to make what a staff interpreter paid $30,000 earns in a year. Furthermore, a freelance interpreter would need to work only 138 days to earn the annual salary of a Supervisory Interpreter--approximately $36,000. Even at the current rate of $175/day, a freelancer would need to work only 171 days to make what a federal staff interpreter earns annually. Already under the current system this freelance pay rate is causing problems in the U. S. District Court, Central District of California, where the present Supervisory Interpreter has been seeking a person to fill a staff position for three years. Her stated problem: The difficulty of finding someone willing to give up the relative ease of autonomous freelance work in order to assume a full-time position burdened by numerous bureaucratic restrictions and less annual pay than what can be derived from eight months of freelancing.

In addition, the problems of state courts would appear in federal courts, such as:

1) the enticement of current staff interpreters into freelance work because of the dramatic increase in per diems

2) budgetary problems for the AO, which has already been denied budgetary increases for additional staff. Instead of having staff for those areas targeted for increases, the AO will be paying out more in per diems at $260/day rather than saving in those areas with staff positions

3) a natural resentment by working staff who might stay with the government full time but who resent the 50% increase to their freelance counterparts while they themselves are locked into government pay-classification scales

4) a reluctance by judges to utilize more than one interpreter in the courtroom in multiple defendant-trials because of budgetary constraints.

CONCLUSION

In reality, this proposed per diem increase would have very serious substantive and costly effects on federal as well as state systems. All of the advances made to increase the use of qualified interpreters at all court levels may be jeopardized. Reasonable and planned increases for freelance interpreters are practicable using methods such as the one I have proposed.

Senator DECONCINI. Do you agree that this law should be expanded to include grand juries?

Dr. GONZALEZ. I wholeheartedly support that part of the bill.

Senator DECONCINI. Thank you

Mr. Cokely.

## STATEMENT OF DENNIS COKELY

Dr. COKELY. Thank you, Senator. I would like to, first of all, thank the subcommittee for allowing me to testify on behalf of the Registry of Interpreters for the Deaf and for interpreters for deaf and hearing-impaired people across the United States.

I would refer you to the proceedings of the hearings of the original Court Interpreters Act of 1978 for information about the history of the Registry of Interpreters for the Deaf and the need for interpreters. That need still exists.

It is ironic that the very existence of the Registry of Interpreters for the Deaf places us in a slightly different position than the position of a spoken language interpreter. There are some who view our very existence as evidence for why we, sign language interpreters, should not be included in this piece of legislation.

There are those who claim that the registry currently has a national evaluation system that is adequate. Our evaluation system makes no claims about the competence of an interpreter to work in the legal setting. Anyone who interprets it thusly is quite simply wrong.

Ten years ago, we instituted a legal evaluation. Five years ago, that evaluation was suspended. On two separate occasions that I am aware of, we requested either monetary or personnel assistance from the Administrative Office to continue to offer our legal evaluation and to revise it. Those requests were denied.

The very position that the RID has held as an evaluating certifying body for over 14 years gives it a unique perspective on cost. I have discussed these in my written testimony and will not take any more time to do so now.

However, the per language cost of $150,000 is, by our estimate, accurate. Our estimates are that $150,000 will allow us to revise our existing evaluation system along the framework that we have laid out that is attached in the written testimony, and that is slightly more expensive than it would be for spoken language tests because sign language interpreters necessitate the use of videotapes.

Finally, I would like to address the issue of the task force. I have done so in my written testimony, but let me simply reiterate here that the very complexity of the task of interpretation and the incredible possibility and probability for error is such that the composition of the task force is, as it ought to be, specialists who are able to validate the work of the task force, the intent of S. 1853, and the intent of the original Court Interpreters Act.

Thank you.

[The prepared statement follows:]

## PREPARED STATEMENT OF DENNIS COKELY

As president of the Registry of Interpreters for the Deaf, I am pleased and honored to be able to present testimony today in support of S. 1853 -- the Court Interpreters Improvement Act. The Registry of Interpreters for the Deaf was established in 1964 and incorporated as a non-profit organization in 1972. With Affiliate Chapters in all fifty states, our current national membership is approximately 3,000 individuals; membership in Affiliate Chapters approaches 8,000. Since 1972 the RID, through its Affiliate Chapters, has conducted over 8,500 interpreter evaluations under the auspices of our National Evaluation and Certification program.

There are a number of reasons why, on behalf of the RID membership and interpreters in general, I ask your support for this important piece of legislation. Some of these reasons deal with the nature of interpretation and interpreters, some of them deal with the accessability of constitutional rights -- all of them deal with the integrity of our judicial system. However, before addressing each of these in some detail, I would like to offer some general comments about S. 1853.

One of the most significant aspects of this piece of legislation is the National Court Interpreters Special Task Force [S 1829]. The significance of this Task Force lies, not in its creation, for the establishment of advisory groups and task forces has come to be expected whenever change is contemplated. Rather, the significance of the National Court Interpreters Special Task Force lies in its composition. Rarely have interpreters been given the opportunity to be involved in making decisions and designing programs that directly affect them. It is often the case that decisions are made, programs are designed, and demands are placed on interpreters by those who have little little knowledge of, and even less appreciation for, the art and science of interpretation.

The time-worn adage "A little knowledge is a dangerous thing" may have first been uttered by an interpreter forced to comply with the demands of those unaware of the rigors of the task of interpretation. It is not unusual for those with minimal exposure to a second language to underestimate the task of inter-lingual, inter-cultural interpretation. For example, the person who learned in a high school Spanish class to equate the words 'casa' and 'house', may not appreciate the difficulties of accurately interpreting the following English phrases: "the House of Rothchild", "the House of Linens", "to house a fugitive from justice", and "the House of Representatives".

It is ironic that individuals, who would claim no expertise in scientific and technical areas in which they have no background or training, claim, through their actions, a certain expertise in interpretation. It is such individuals who may object to the composition of the Task Force. Their objections stem from presumed knowledge and competence. However, since they presume no knowledge of, for example, rocket boosters or engineering, they do not object to the composition of the Special Task Force investigating the recent space shuttle tragedy. Neither do they presume the specialized knowledge necessary, for example, to determine standards and testing procedures for doctors, lawyers, or accountants.

In short, the composition of the National Court Interpreters Special Task Force is as it ought to be -- interpreters who have the specialized knowledge and skills necessary to validate the work of the Task Force and implement the intent of S. 1853 and the Court Interpreters Act of 1978. This is not to say that non-interpreters have nothing to contribute nor that their views are to be ignored. On the contrary, they are the very reason that interpreters are necessary. However, by virtue of the fact that they do rely upon the services of interpreters, they are unable to fully appreciate the demands of the task of interpretation. Thus, their unique and valuable perspective must be considered by interpreters in the same manner that the medical profession considers input from patients, or the legal profession from clients.

Apart from concurring with the composition of the National Court Interpreters Special Task Force as called for in S.1853, there are other reasons why I urge your support for this legislation. Chief among these is the very nature of the task of interpretation and the need for establishing valid, viable standards in the judicial setting.

A simplistic, but nonetheless accurate, view of the process of interpretation would include these stages: listening, analyzing, understanding, equating, and expressing. Each of these stages, taken by itself, is quite a complex and demanding cognitive task. When they occur as part of the larger process of interpretation, the cognitive complexity is exponentially increased. The task becomes even more complex when the process of interpretation must be conducted in a simultaneous manner. In simultaneous interpretation, the interpreter may be concurrently listening to one statement, analyzing and trying to understand a second statement, and expressing a third statement. It is no wonder then that after approximately twenty-five minutes research has shown that an interpreter becomes fatigued and begins to make errors [Brasel, 1976]. It is also no wonder, then, that the potential for interpreter error is as great as it is.

What follows is not intended to be a thorough examination of the cognitive demands involved in the process of interpretation [for a more detailed treatment see Cokely, 1984; Moser, 1978; Gerver, 1976]. Rather, it is a brief discussion of two of the major stages in the process as a means of illustrating the complexity of the task. The discussion also serves to highlight the potential for errors that exists when the competence of interpreters is unspecified and unmonitored.

A review of the available research [e.g. Cokely, 1984] shows that interpretation is a highly complex, stressful cognitive task. The complexity of the task stems, in part, from the fact that an interpreter must fully and accurately understand the original message before it can be interpreted. Misunderstandings always result in misinterpretations. The extent to which the interpreter accurately understands the original message will influence the extent to which that message can be interpreted accurately. However, the deliberate care and caution taken by judges and attorneys in expressing themselves often involves complex, convoluted grammatical structures and the use of highly specialized terminology [Charrow & Charrow, 1979]. This presents unique, but not insurmountable, challenges for the interpreter. Not only must the interpreter understand the meaning and intent of specialized terminology, but must also accurately understand the wider context in which that terminology is used.

Once the interpreter has understood the meaning and intent of a message, the interpreter must then formulate an equivalent of that message in the other language. The interpreter's ability to do this is directly determined by the interpreter's competence in the other language. Thus, even though an interpreter may understand the original message accurately, that message will be distorted unless the interpreter is truly competent in the other language. Of course, the very nature of languages and language diversity means that accurate and complete interpretation is not, and can not be, a matter of simple one-for-one substitution of words [Nida & Taber,1974; Seleskovitch,1978; Cokely,1984]. Rather, accurate and complete interpretation means that the interpreted message must be expressed such that it has the potential for evoking the same informational and affective response as the original message might evoke. Rarely, if ever, can such message equivalence be accomplished through simple substitution.

Although no professional interpreter wants to render an erroneous or flawed interpretation, the complexity of the task is such that errors do occur. Although the types and frequency of interpreter errors have been documented in depth elsewhere [Gerver, 1969; Barik, 1973; Cokely, 1984], there are several major types of potential interpreter error. The first type of potential error is the omission of information from the original message. This may occur either because the interpreter, analyzing a given utterance or portion of an utterance, fails to listen to subsequent information or it may occur because the interpreter fails to understand an utterance and, rather than ask for or wait for clarification, ignores the utterance. The second type of potential error is the addition of information to the original message. This may occur either because the interpreter does not accurately understand the original message or because of limited competence in the other language. A third type of interpreter error is the substitution of information in the original message. This also may occur because the interpreter does not accurately understand the original message or because of limited competence in the other language. A final type of interpreter error is anomalies -- interpreted utterances that simply make no sense in the other language. These may occur either because the interpreter is insufficiently monitoring his/her performance or because of a failure at some stage in the overall cognitive process.

What is particularly significant about interpreter errors is not that they occur -- interpreters are, after all, only human. Rather, what is significant is that they can only be detected by another interpreter. In order to identify an interpreter error, one must be able to determine the extent to which the interpreted message is equivalent to the original message or the extent to which the interpreted message deviates from the original message. This requires bilingual and bi-cultural competence and an understanding of the process of interpretation. Those who rely upon the services of interpreters [and for S. 1853, this includes at least judges, attorneys, court reporters, jury members, witnesses, and defendants] are, by the very fact that they do rely upon interpreters, unable to determine equivalence accurately. Were they able to determine equivalence accurately, then interpreters would not be needed.

The seriousness and impact of any potential interpreter error can be gauged by the consequences of the error on those who rely upon the interpretation. The omission of information from an after-dinner speech, while unacceptable to professional interpreters, hardly compares with the omission of information from the testimony of a defendant in a murder trial. The consequences of the former may be a missed or misunderstood joke; the consequences of the latter may be life imprisonment. Unfortunately, interpreter errors that occur in judicial proceedings are permanent. Such errors become part of the official judicial proceedings - dutifully and faithfully recorded and preserved by the court reporter who, like the judge, jury, attorneys, witnesses and defendant, assumes that no error occurred. It is only when another interpreter is able to compare the official transcript with audio or video recordings of the interpretation that errors can be detected. Rectifying such post facto errors can only be accomplished through costly appeals or declaration of a mistrial.

An increasing number of spoken language and sign language interpreters, recognizing this fact, are beginning to work in teams. In this way they can work in tandem -- relieving each other every twenty minutes or whenever fatigue and stress begin to affect performance. Another advantage to team interpreting is that the occurrence of undetected interpreter errors can be significantly reduced because the interpreters are able to monitor each other's performance. The establishment of valid standards for interpreters and a reliable means of assesing those standards, coupled with team interpreting, in my opinion, provides the only available means of ensuring that the constitutional right of due process is not violated as a result of inadvertent interpreter error.

An obvious and legitimate question at this point concerns the costs involved in establishing standards for interpreters and in assessing those standards for each of the languages prescribed by S. 1853. One possible response would be to ask what the costs would be if such standards are not established and assessed -- the monetary costs involved in appeals, mistrials, and re-hearings; the emotional and psychological costs to plantiffs and defendants; and the moral and ethical costs to our judicial system. However, such a response, pitting morality and ethics against budgets and budget cuts, may be counted by some as no response.

In the absence of complete data on the fiscal requirements needed to implement S. 1853, one can only draw upon the evaluation development and administrative experience of the RID in its sign language-English evaluation and that of the Administrative Office of the United States Courts in its Spanish-English evaluation. Therefore, I will attempt to extrapolate from the experience of the Registry of Interpreters for the Deaf [RID] which, for the past fourteen years, has developed national standards for and administered a national assessment of those standards for sign language interpreters.

At the present time, the evaluation administered by the RID, a non-profit organization, is a general level of competence evaluation. That is, it is not directed at determining competence in any specific or single setting. The evaluation consists of a performance assessment during which a candidate is expected to interpret several videotaped selections. Half of these selections are delivered in English and are to be interpreted into sign language; the other half are delivered in sign language and are to be interpreted into English. A candidate's performance is assessed by a panel of three trained and monitored evaluators. Among other factors, these evaluators assess interpretation accuracy, equivalency, language intelligibility, and knowledge of expected ethical behavior. Each evaluator is compensated at the rate of ten dollars per candidate evaluated and, because of the stress and fatigue involved in assessing interpreters, is prohibited from assessing more than eight candidates in a single day. Some might argue that that rate of compensation is hardly appropriate for a full day's work and does not adequately reflect the vital function that evaluators perform. However, since candidates must absorb the cost of the evaluation themselves, it is, at present, what the market and their pocketbook will bear.

For the past eight months the National Evaluation Board, which is the RID committee charged with administering the National Evaluation System, and the National Office staff of the RID have thoroughly analyzed the costs involved in administering the evaluation system. It is our belief that our performance evaluation can be administered in a cost effective manner at a cost of $85.00 per candidate. This includes staff time and materials required for initial processing of an application, several mailings to the candidate, payment of the evaluators, computer scoring the results, and reporting results to the candidate. This does not, however, cover expenses such as equipment rental costs or travel expenses for evaluators. It also does not provide funding for certain necessary elements such as development of new materials or periodic re-training of evaluators.

We are in the process of implementing several recommendations designed to streamline and improve our National Evaluation System. Among these recommendations are the development of a written test [successful completion of which would be a prerequisite to taking the performance assessment], revision of the testing materials that are used, and the establishment of regional testing centers [which will permit a greater degree of consistency and quality control in the administration of the evaluation]. Our best estimates at this time are that these adjustments to our generalist competency evaluation will cost approximately $150,000 in development and implementation monies.

Although I make no claims to expertise in interpretation of any of the spoken languages prescribed in S. 1853, and, am not privy to the expenses incurred by the Administrative Office of the United States Courts, I am convinced that the evaluation development cost per language specified will be far less than that for the Spanish-English evaluation. It would not be unrealistic to expect that per language development costs would be fully half those for the Spanish-English evaluation. As with all endeavors, it is much more cost effective to replicate than to reinvent. The theoretical and psychometric framework developed by the Spanish-English task force is equally valid for all languages. Certainly that portion of the Evaluation that focuses on English will need little, if any, modification or revision. The systematic approach to a national evaluation developed by the RID's National Evaluation Board is also equally valid for all languages. Certainly those factors that deal with the administration of a national evaluation will need little, if any, modification. In short, drawing upon the experience and expertise of those interpreters involved in developing the Spanish-English and the sign language-English evaluations will allow development of the other language-specific evaluations to proceed at a much quicker and more cost effective pace.

I am aware that the actual per candidate administration costs of the Spanish-English evaluation far exceed those for the RID's evaluation. This is perhaps understandable when one considers the fact that, as I understand it, candidates were not charged to take the Spanish-English evaluation. Thus, all administrative costs had to be borne solely and directly by the Administrative Office of the United States Courts. Obviously were such a practice to continue and be equally applied to all languages specified by S. 1853, the administrative costs would be significant indeed. However, it is my belief that this does not have to be the case.

It may have been that the original motivation for that "open door policy" was, in part, an attempt to increase the likelihood that large numbers of Spanish-English interpreters would access the evaluation. Given the fact that in this country spoken language interpreters in general, and Spanish-English interpreters in particular, have not had a tradition of being formally evaluated or certified, such a policy was understandable. However, S. 1853 provides a more professionally acceptable mechanism for ensuring that interpreters will want to access the evaluation -- a fee for service that is commensurate with the task. The legislation stipulates that fees paid to qualified interpreters in federal judicial proceedings shall not "... be set at a rate less than those currently paid by the United States Department of State to conference level interpreters for the same language." The motivation and incentive necessary to ensure sufficient numbers of evaluation candidates is not a "free admissions" policy but, rather, appropriate recognition of and compensation for the level of competence necessary for the task and for the professional service rendered. This is as it should be, for the task of interpreting judicial proceedings, along with its inherent stress and pressure, is no different than the task of interpreting State Department conferences. With such recognition and compensation in place, I believe that informed and aware interpreters would be more than willing to pay a reasonable fee for evaluations. This, coupled with appropriate guidelines for administering evaluations, would offset a major portion of the costs involved in administering such evaluations.

In concluding my remarks, I would ask that you bear in mind the following when you are voting on S. 1853:

- the composition of the National Court Interpreters Special Task Force is as it should be -- professionals, thoroughly familiar with the task, who are able to objectively determine minimally acceptable standards of competence and who, in consultation with psychometrists, are able to design a valid and reliable assessment of those standards;
- the cognitive complexity of the task of interpretation is enormous and no evaluation or certification procedure will ever totally eliminate the possibility of interpreter error;
- the cognitive demands of the task of interpreting are such that after approximately twenty-five minutes stress and fatigue adversely affect an interpreter's performance;
- misinterpretations can only be detected and rectified by another interpreter, not by those who rely upon the services of the interpreter;
- in the absence of external monitoring mechanisms, such as competency evaluations and team interpreting, the likelihood of interpreter error can never be reduced to "an acceptable level" [if there can ever be such a level in judicial proceedings];
- much of the initial theoretical and practical development work needed to implement valid and reliable evaluations of the languages specified in S. 1853 has already been accomplished by the Administrative Office of the United

States Courts and the RID. Once developed, evaluations can be administered in a cost effective manner that would require minimal federal appropriations;

- the compensation guidelines in S. 1853 are commensurate with the task -- surely we, as a nation, do not wish to devalue justice? Yet this is precisely what we have done in placing greater value on the task of interpreting conferences designed, for example, to negotiate total allowable tonnage of merchant marine vessels than we place on the task of interpreting judicial proceedings.

The primary issue addressed by S. 1853 is quite simple -- our national commitment to justice and the right to due process of law. Just as we recognize that the mere presence of an attorney or a judge does not guarantee that our commitment to justice has been honored or that due process of law has been accorded, so too we must recognize that the presence of an unqualified interpreter is no guarantee of appropriate and accurate access to judicial proceedings. I concur with Senator Hatch in his hope that non-English speaking Americans be provided with high quality interpretation in Federal judicial proceedings. I ask for and urge your support of this important piece of legislation.

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## Education:

Ph.D., 1984, Georgetown University, Washington, D.C.
Major: Sociolinguistics
Minors: Applied Linguistics
Sociolinguistics and Sign Language
Dissertation (with distinction): *Towards a Sociolinguistic Model of the Interpretation Process: Focus on ASL and English.*

M.A., 1976, American University, Washington, D.C.
Major: Applied Linguistics

B.A., 1968, St. Mary's University, Baltimore, Maryland
Major: Philosophy
Minor: Classical Languages

## Experience:

President, Sign Media, Inc. Silver Spring, Maryland,
Jan. 1980 - present

Responsible for conceiving, directing and producing commercially available videotapes dealing with Deaf culture, Sign Language instruction, and interpreter training.

Project Officer, Curriculum Development Project
University of New Brunswick, Fredericton, Canada,
May, 1985 - present

Responsible for developing model curriculum for interpreter training programs.

Research Associate, Linguistics Research Lab
Gallaudet Research Institute, Gallaudet College
Washington, D.C. January, 1980 - December, 1984

Responsible for designing and conducting research projects in applied Sign Language linguistics, focusing on the areas of Sign Language interpreting, teaching, and educational policy development; responsibilities included research design and implementation of self-generated projects, disseminating theoretical, descriptive, and applied research results to Sign Language practicioners -- Sign Language teachers, interpreter trainers, interpreters, administrators, and teachers in the field of Deaf Education; consult in the areas of Sign Language teaching, Sign Language interpreting, bilingual education, and Deaf Education at Gallaudet College, and on a national and international level.

Co-ordinator, Pre-College Manual Communication Programs
Pre-College Programs, Gallaudet College
Washington, D.C. , 1977 - 1980

Administratively responsible for developing and coordinating sign language programs and policies for faculty, staff, students, and parents at the Model Secondary School for the Deaf and the Kendall Demonstration Elementary School; program development included: a Sign Language evaluation for faculty and staff, a diagnostic evaluation instrument for student intake, an innovative sign language program for parents and family members; administrative responsibilities included: managing and preparing program budgets totalling over $200, 000; supervision of full-time and part-time staff; supervision of curriculum development, materials preparation, preparation of in- service training activities; additional responsibilities included coordinating several task forces and acting as liaison with a wide range of professional organizations.

Sign Language Specialist, Kendall Demonstration Elementary School
Gallaudet College, 1975 - 1977

Administrative and budgetary responsibilities for developing and implementing an innovative Sign Language instructional program for parents and family members, supervising full-time and part-time staff, developing and conducting in-service training programs, supervision of curriculum development and media production; additional responsibilities included: conducting diagnostic intake evaluations, serving as Sign Language consultant for faculty and staff, for parent/teacher/student conferences required by Public Law 94-142, and for task forces related to curriculum development, diagnostic assessment, materials development, and communication policy development.

Instructor, Kendall Demonstration Elementary School
Gallaudet College, 1971 - 1975

Instructed upper-primary, elementary, and junior high school aged deaf students in a range of subject areas including: English, Social Studies, and Communication Skills.

Instructor, St. Anthony's Grade School, Washington, D.C.
1969 - 1971

## Selected Publications:

When is a Pidgin not a Pidgin? An alternate analysis of the ASL-English Contact Situation. *Sign Language Studies, 38*, Spring, 1983.

Metanotative Qualitites: How Accurately are They Conveyed by Interpreters? *The Reflector, 5*, Winter, 1983.

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*Pre-College Programs: Guidelines for Manual Communication.* Washington, DC: Gallaudet College, 1979.

Options: A Position Paper on the Relationship between Manual English and Sign. *The Deaf American, 25, No. 9,* 1973.

**Related Experience:**

President, Registry of Interpreters for the Deaf, 1983 - present.

Editor of *The Reflector, A Journal for Sign Language Teachers and Interpreters*, 1981 - 1985.

Instructor, Department of Linguistics, Gallaudet College, Washington, D.C., 1982.

Instructor, Department of Education, Gallaudet College, Washington, D.C., 1975 - 79.

Coordinator of Interpreters for the NATO International Conference on Sign Language Research, Copenhaugen, Denmark, 1979.

Coordinator of Interpreters for the Third National Symposium on Sign Language Research and Teaching, Boston, 1980.

Coordinator of American Interpreters for the Second International Symposium on Sign Language Research, Bristol, England, 1981.

Member of the Board of Directors of the Registry of Interpreters for the Deaf, 1978 - 1980.

Member of the Sign Instructors Guidance Network (S.I.G.N.) evaluation/certification team, 1976 - present.

Consultant: Communication and Education: (selected references) The British Deaf Association, Carlisle, England; Bloomfield Hills School District, Bloomfield, Michigan; Ministry of Education, Toronto, Canada; Delaware School for the Deaf, Newark, Delaware; Louisanna School for the Deaf, Baton Rouge, Louisanna; Kentucky School for the Deaf, Lexington, Kentucky; St. Francis De Sales School for the Deaf, New York, New York;

Consultant: Sign Language Instruction: (selected references) Madonna College, Lavonia, Michigan; The British Deaf Association, Carlisle, England; Community College of Philadelphia, Philadelphia, Pennsylvania; Gallaudet College, Washington, D.C.; California State University at Northridge, Northridge, California; National Technical Institute for the Deaf, Rochester, New York; Vista Community College, Berkeley, California;

Consultant: Sign Language Evaluation: (selected references) Bloomfield Hills School District, Bloomfield, Michigan; Vista Community College, Berkeley, California; University of Tennessee, Knoxville, Tennessee; Madonna College, Lavonia, Michigan; Gallaudet College, Washington, D.C.; Charlotte School District, Charlotte, North Carolina; Portland Public Schools, Portland, Oregon; The British Deaf Association, Carlisle, England; Community College of Philadelphia, Philadelphia, Pennsylvania; National Technical Institute for the Deaf, Rochester, New York;

Consultant: Sign Language Interpretation and Interpreter Training: (selected references) University of New Brunswick, Fredericton, Canada; Ohlone College, Fremont, California; Madonna College, Livonia, Michigan; Southwest Collegiate Institute for the Deaf, Big Spring, Texas; Cleveland State University, Cleveland, Ohio; California State University at

Northridge, Northridge, California; National Technical Institute for the Deaf, Rochester, New York; Gallaudet College, Washington, D.C.; Community College of Philadelphia, Philadelphia, Pennsylvania;

## Selected Certification:

Comprehensive Skills Certificate (CSC) from the Registry of Interpreters for the Deaf
Teaching English as a Second/Foreign Language
Comprehensive Teaching Certificate from the Sign Instructors Guidance Network
Lifetime Post-Secondary Teaching Certificate, state of California

## Membership in Professional Organizations:

Registry of Interpreters for the Deaf
Sign Instructors Guidance Network
Conference of Interpreter Trainers
Translators and Interpreters Educational Society
Linguistics Society of America
American Association of Applied Linguistics
American Anthropological Association
American Association for the Advancement of Science
Research Committee for Sociolinguistics

MADONNA
COLLEGE

36600 SCHOOLCRAFT ROAD
LIVONIA, MICHIGAN 48150

February 17, 1986

Honorable Carl Levin
459 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Levin:

This letter is in regards to Senate Bill number S.1853, the "Court Interpreters Improvement Act of 1985" (CIIA). As Chairperson of the Madonna College Sign Language Studies Department and Region III Representative of the National Registry of Interpreters for the Deaf, I urge your vote for passage of this important piece of legislation.

It is imperative Senate Bill S.1853 pass as it will enhance and strengthen the federal court system by providing certified interpreters for the deaf, for the judge, jury, defendants and witnesses. This Bill also will assist in providing accurate interpretation and thus promote justice. This Bill, S.1853, also will provide certified and competent interpretation for witnesses and defendants and will include all grand jury and pre-trial proceedings, not just for trials only. Most importantly, this Bill will directly benefit deaf defendants and witnesses in the United States justice system.

Your attention to the successful passage of Senate Bill S.1853 is greatly appreciated. I look forward to your vote of support. Thank you for your excellent record of support in matters and issues which directly affect deaf citizens of America.

Very sincerely,
Kenneth O. Rust
Kenneth O. Rust
Chairperson
Madonna College
Sign Language Studies/
Interpreting Department

KR/jd

cc RID Board

**MADONNA COLLEGE**

36600 SCHOOLCRAFT ROAD
LIVONIA, MICHIGAN 48150

February 17, 1986

Honorable Donald W. Riegle, Jr.
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Riegle:

This letter is in regards to Senate Bill number S.1853, the "Court Interpreters Improvement Act of 1985" (CIIA). As Chairperson of the Madonna College Sign Language Studies Department and Region III Representative of the National Registry of Interpreters for the Deaf, I urge your vote for passage of this important piece of legislation.

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Very sincerely,

Kenneth O. Rust

Kenneth O. Rust
Chairperson
Madonna College
Sign Language Studies/
Interpreting Department

KR/jd

cc RID Board

PC RID

Potomac Chapter
Registry of Interpreters
for the Deaf

P.O. Box 1272
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Washington, D.C. 20002

February 20, 1986

The Honorable Walter Fauntroy
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Fauntroy:

As president of the Potomac Chapter of the Registry for Interpreters for the Deaf (PCRID) I represent a large constituency of sign language interpreters in Maryland and Metro Washington D.C. We urge your support and vote on behalf of the the passage of Senate Bill S. 1853, the "Court Interpreters Improvement Action of 1985." (CIIA) There is great concern over this bill among the PCRID membership because of the direct impact it has on our profession and the consumers we serve.

Of the 16 million deaf people in the United States, 286 thousand reside in Washington D.C. Without the passage of the above bill, these people are not given the opportunity for equal justice under the law.

Incompetent interpreters and interpreters untrained for court work are currently being used in the Federal system. The consequences are often disasterous. Can you imagine not fully understanding your own trial? Or being misquoted unknowingly when you're on the stand? These are everyday occurences in Federal court which result in frequent mistrials and unnecessary federal expenditure. The other incalculable cost is in human rights.

On behalf of PCRID, I thank you for your attention and consideration, Congressman Fauntroy. Again, we urge your support of Senate Bill S. 1853 and will closely follow your vote.

Sincerely,

Susan Newburger

Susan Newburger, President

PCRID
Potomac Chapter
Registry of Interpreters
for the Deaf

P.O. Box 1272
Gallaudet College
Washington, D.C. 20002

February 20, 1986

The Honorable Paul S. Sarbanes
U.S. Senate
Washington, D.C. 20510

Dear Senator Sarbanes:

As president of the Potomac Chapter of the Registry for Interpreters for the Deaf (PCRID) I represent a large constituency of sign language interpreters in Maryland and Metro Washington D.C. We urge your support and vote on behalf of the the passage of Senate Bill S. 1853, the "Court Interpreters Improvement Action of 1985." (CIIA) There is great concern over this bill among the PCRID membership because of the direct impact it has on our profession and the consumers we serve.

Of the 16 million deaf people in the United States, 286 thousand reside in Maryland. Without the passage of the above bill, these people are not given the opportunity for equal justice under the law.

Incompetent interpreters and interpreters untrained for court work are currently being used in the Federal system. The consequences are often disasterous. Can you imagine not fully understanding your own trial? Or being misquoted unknowingly when you're on the stand? These are everyday occurences in Federal court which result in frequent mistrials and unnecessary federal expenditure. The other incalculable cost is in human rights.

On behalf of PCRID, I thank you for your attention and consideration, Senator Sarbanes. Again, we urge your support of Senate Bill S. 1853 and will closely follow your vote.

Sincerely,

Susan Newburger

Susan Newburger, President

Incorporated 1974

PCRID

Potomac Chapter
Registry of Interpreters
for the Deaf

P.O. Box 1272
Gallaudet College
Washington, D.C. 20002

February 20, 1986

The Honorable Charles McC. Mathias Jr.
U.S. Senate
Washington, D.C. 20510

Dear Senator Mathias:

As president of the Potomac Chapter of the Registry for Interpreters for the Deaf (PCRID) I represent a large constituency of sign language interpreters in Maryland and Metro Washington D.C. We urge your support and vote on behalf of the the passage of Senate Bill S. 1853, the "Court Interpreters Improvement Action of 1985." (CIIA) There is great concern over this bill among the PCRID membership because of the direct impact it has on our profession and the consumers we serve.

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On behalf of PCRID, I thank you for your attention and consideration, Senator Mathias. Again, we urge your support of Senate Bill S. 1853 and will closely follow your vote.

Sincerely,

Susan Newburger

Susan Newburger, President

ESTIMATES OF HEARING LOSSES IN MARYLAND BY COUNTY

| Selected Area | Total Civilian Population | Hearing Impaired | Significant Bilateral Loss | Deaf |
|---|---|---|---|---|
| Allegany | 85,000 | 6,000 | 3,000 | 800 |
| Anne Arundel | 384,000 | 26,000 | 13,000 | 3,000 |
| Baltimore | 649,000 | 44,000 | 22,000 | 6,000 |
| Calvert | 32,000 | 2,000 | 1,000 | 300 |
| Caroline | 23,000 | 2,000 | 800 | 200 |
| Carroll | 93,000 | 6,000 | 3,000 | 800 |
| Cecil | 56,000 | 2,000 | 1,000 | 300 |
| Charles | 69,000 | 5,000 | 2,000 | 600 |
| Dorchester | 31,000 | 2,000 | 1,000 | 300 |
| Frederick | 107,000 | 7,000 | 3,000 | 1,000 |
| Garrett | 26,000 | 2,000 | 1,000 | 200 |
| Harford | 152,000 | 10,000 | 5,000 | 1,000 |
| Howard | 125,000 | 9,000 | 4,000 | 1,000 |
| Kent | 17,000 | 1,000 | 600 | 200 |
| Montgomery | 595,000 | 41,000 | 20,000 | 5,000 |
| Prince George's | 678,000 | 46,000 | 23,000 | 6,000 |
| Queen Anne's | 23,000 | 2,000 | 1,000 | 200 |
| St. Mary's | 55,000 | 4,000 | 2,000 | 500 |
| Somerset | 20,000 | 1,000 | 700 | 200 |
| Talbot | 27,000 | 2,000 | 900 | 200 |
| Washington | 111,000 | 8,000 | 4,000 | 1,000 |
| Wicomico | 62,000 | 4,000 | 2,000 | 600 |
| Worcester | 28,000 | 2,000 | 1,000 | 300 |
| Baltimore City | 774,000 | 53,000 | 26,000 | 7,000 |

U.S. Bureau of the Census, July 1978
Maryland Manual, 1979

Hearing Impaired - any degree of hearing loss in one or both ears.
Significant Bilateral Loss - those hearing impaired who have substantial difficulty hearing in both ears.
Deaf - cannot hear and understand speech.

THE NATIONAL ACADEMY

Prepared by : Office of Demographic Studies
Gallaudet College, Washington, D.C.

ESTIMATES OF THOSE WITH HEARING LOSSES

| Geographic Area | Total General Population* | Hearing Impaired | Significant Bilateral Loss | Deaf | Prevocationally Deaf |
|---|---|---|---|---|---|
| NORTHEAST U.S. | | | | | |
| Maine | 1,124,000 | 67,000 | 29,000 | 8,000 | 2,000 |
| New Hampshire | 919,000 | 55,000 | 23,000 | 6,000 | 2,000 |
| Vermont | 511,000 | 31,000 | 13,000 | 4,000 | 1,000 |
| Massachusetts | 5,728,000 | 342,000 | 146,000 | 40,000 | 10,000 |
| Rhode Island | 946,000 | 57,000 | 24,000 | 7,000 | 2,000 |
| Connecticut | 3,096,000 | 185,000 | 79,000 | 22,000 | 5,000 |
| New York | 17,508,000 | 1,046,000 | 446,000 | 122,000 | 30,000 |
| New Jersey | 7,342,000 | 439,000 | 187,000 | 51,000 | 13,000 |
| Pennsylvania | 11,828,000 | 707,000 | 301,000 | 82,000 | 20,000 |
| NORTHCENTRAL U.S. | | | | | |
| Ohio | 10,772,000 | 707,000 | 363,000 | 104,000 | 26,000 |
| Indiana | 5,461,000 | 358,000 | 184,000 | 53,000 | 13,000 |
| Illinois | 11,355,000 | 745,000 | 383,000 | 110,000 | 27,000 |
| Michigan | 9,239,000 | 606,000 | 311,000 | 89,000 | 22,000 |
| Wisconsin | 4,694,000 | 308,000 | 158,000 | 45,000 | 11,000 |
| Minnesota | 4,069,000 | 267,000 | 137,000 | 39,000 | 10,000 |
| Iowa | 2,909,000 | 191,000 | 98,000 | 28,000 | 7,000 |
| Missouri | 4,906,000 | 322,000 | 165,000 | 47,000 | 12,000 |
| North Dakota | 652,000 | 43,000 | 22,000 | 6,000 | 2,000 |
| South Dakota | 688,000 | 45,000 | 23,000 | 7,000 | 2,000 |
| Nebraska | 1,565,000 | 103,000 | 53,000 | 15,000 | 4,000 |
| Kansas | 2,356,000 | 155,000 | 79,000 | 23,000 | 6,000 |
| SOUTHERN U.S. | | | | | |
| Delaware | 595,000 | 40,000 | 20,000 | 5,000 | 1,000 |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Washington, D.C. | 635,000 | 43,000 | 22,000 | 6,000 | 1,000 |
| Virginia | 5,323,000 | 362,000 | 181,000 | 48,000 | 10,000 |
| West Virginia | 1,931,000 | 131,000 | 66,000 | 17,000 | 4,000 |
| North Carolina | 5,848,000 | 398,000 | 199,000 | 52,000 | 11,000 |
| South Carolina | 3,070,000 | 209,000 | 105,000 | 27,000 | 6,000 |
| Georgia | 5,404,000 | 368,000 | 184,000 | 48,000 | 11,000 |
| Florida | 9,580,000 | 652,000 | 326,000 | 86,000 | 19,000 |
| Kentucky | 3,643,000 | 248,000 | 124,000 | 33,000 | 7,000 |
| Tennessee | 4,546,000 | 309,000 | 155,000 | 41,000 | 9,000 |
| Alabama | 3,870,000 | 263,000 | 132,000 | 35,000 | 8,000 |
| Mississippi | 2,511,000 | 171,000 | 86,000 | 22,000 | 5,000 |
| Arkansas | 2,284,000 | 155,000 | 78,000 | 20,000 | 4,000 |
| Louisiana | 4,200,000 | 286,000 | 143,000 | 38,000 | 8,000 |
| Oklahoma | 3,001,000 | 204,000 | 102,000 | 27,000 | 6,000 |
| Texas | 14,174,000 | 965,000 | 483,000 | 127,000 | 28,000 |
| WESTERN U.S. | | | | | |
| Montana | 784,000 | 56,000 | 29,000 | 7,000 | 2,000 |
| Idaho | 944,000 | 68,000 | 35,000 | 9,000 | 2,000 |
| Wyoming | 469,000 | 34,000 | 17,000 | 4,000 | 1,000 |
| Colorado | 2,882,000 | 207,000 | 106,000 | 27,000 | 6,000 |
| New Mexico | 1,295,000 | 93,000 | 48,000 | 12,000 | 3,000 |
| Arizona | 2,719,000 | 195,000 | 100,000 | 25,000 | 5,000 |
| Utah | 1,459,000 | 105,000 | 54,000 | 14,000 | 3,000 |
| Nevada | 800,000 | 57,000 | 29,000 | 7,000 | 2,000 |
| Washington | 4,115,000 | 295,000 | 151,000 | 38,000 | 8,000 |
| Oregon | 2,618,000 | 188,000 | 96,000 | 24,000 | 5,000 |
| California | 23,545,000 | 1,688,000 | 864,000 | 219,000 | 46,000 |
| Alaska | 400,000 | 29,000 | 15,000 | 4,000 | 1,000 |
| Hawaii | 965,000 | 69,000 | 35,000 | 9,000 | 2,000 |

*U.S. Bureau of the Census, April 1980.

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Hearing Impaired = any degree of hearing loss in one or both ears.
Significant Bilateral Loss = those hearing impaired who have substanial difficulty hearing in both ears.
Deaf = cannot hear and understand speech.
Prevocationally Deaf = those who became deaf prior to 19 years of age

## Motions by the NES Study Committee
## June 24 - 26, 1983

I move that the NESSC recommend that the general sign-related certificates awarded by the RID to hearing people be a certificate of interpretation (CI) and a certificate of transliteration (CT). Further, individuals awarded both the certificate of interpretation (CI) and the certificate of transliteration (CT) be awarded a comprehensive skills certificate (CSC).

Vote:Unanimously passed

Rationale:

The RID membership is called upon to function in the two general areas of interpretation (from ASL to English or vice versa) and transliteration (from 'PSE'/intermediate varieties of signing to English or vice versa). Thus, these are two obvious areas in which certification should occur. (It is recognized that attention will have to be given to specifying and clarifying what is meant by 'PSE'/intermediate sign varieties). Additionally, the CSC should represent the ability to interpret and transliterate at a level of proficiency equivalent to the individual certificates of interpretation and transliteration rather than some arbitrary indicant of "greater skill". In short, the CSC should represent a quantatative difference not a qualatative one. Finally, this would allow individuals to be certified in either interpretation or transliteration and have that level of skill in interpretation or transliteration recognized with none of the stigma of "not being fully certified".

The committee also recognizes that there are other certification categories that have to be addressed. However, since the vast majority of RID members are hearing individuals who hold or desire general sign-related certification, it is appropriate to address this category first.

Motion II: (D.C., P.B.)

I move that the NESSC recommend that the standards reflected by the certificate of interpretation (CI) represent a high level of demonstrated competence in interpretation (from English to ASL and vice versa) and that the standards reflected by the certificate of transliteration (CT) represent a high level of demonstrated competence in transliteration (from English to 'PSE'/intermediate sign varieties and vice versa).

Vote:Unanimously passed

Rationale:

The history of the present evaluation system clearly indicates that the evaluation was intended to determine minimum levels of interpretation/transliteration proficiency. That function is now being performed by interpreter training programs and an increasing number of individual states through their Quality Assurance programs. Given the availability of such a minimal competence screening network, it is now appropriate for a national certification to represent a high level of competence rather than a minimal level. Thus, the national certification body (the RID) should endorse and support the notion that its' evaluation procedures demand a high level of demonstrated competence of those awarded certification. Additionally, the present evaluation for CSC often rewarded individuals who possessed a high level of skills in one area (e.g. transliteration) but only mediocre skills in the other area (e.g. interpretation). Individuals' particular skills should be recognized at an appropriate level. This approach negates the need for further delineations of individuals, although distinctions may be made for individuals who fall below the required skill levels.

Motion III: (M.W./D.C.)

I move that the NESSC recommend that hearing applicants for CI and/or CT evaluations will have first satisfied the following prerequisites:

Those desiring and obtaining CT will have demonstrated competence in conversational English and 'PSE'/intermediate sign varieties:

Those desiring and obtaining CI will have demonstrated competence in conversational English and American Sign Language (ASL).

Vote:Unanimously passed

Rationale:

It is generally understood that to be able to interpret from English to ASL (or vice versa), an individual must first be competent in both of those languages. Likewise, to be able to transliterate from English to 'PSE' or an intermediate sign variety (or vice versa), an individual must first be competent in both English and 'PSE' (or the intermediate sign variety involved). (It is recognized that in the test design and construction phase attention will have to be given to specifying and clarifying what is meant by 'PSE'/intermediate sign varieties).

Additionally, establishing the language skills as a prerequisite will provide applicants with feedback about their ability to use the languages in question prior to submitting to an evaluation of their interpretation and/or transliteration skills and Will also function as a screening mechanism for applicants for the interpretation and transliteration evaluations. Further, such a prerequisite screening mechanism will allow consumers to have a greater degree of confidence in the skills of those who are certified by the RID. Finally, the evaluators will be able to concentrate on evaluating interpretation/transliteration skills without having to be concerned with assessing a candidates' basic language abilities.

Motion IV: (M.W./N.L.)

I move that the NESSC recommend that a further prerequisite of applicants for the certificate of interpretation and/or the certificate of transliteration consist of passing a written test which focuses on knowledge of cultural issues and the field of interpretation and/or transliteration.

Vote: Unanimously passed

Rationale:

Before an individual is able to interpret and/or transliterate, it is desirable to determine the extent to which s/he is aware of cultural differences and similarities between members of the American deaf community and members of the American hearing community. In essence, it is important to screen individuals to determine whether or not they are able to function in both communities and cultures since their ability to do so will influence and be reflected in their interpreting and/or transliterating.

Additionally, as with Motion III, appropriate feedback would be provided to applicants that might assist them in acquiring additional cultural knowledge that would be needed prior to taking the performance portion of the CT or CI evaluation. Finally, the present evaluation does not fairly and consistently assess an individuals' knowledge of ethics, for example. A written prerequisite exam would provide a more consistent indication of whether individuals possess the knowledge base and level of ethical behavior necessary to function in the field.

Motion V: (M.W./B.C.)

I move that the NESSC recommend that after initial introductions and helping the candidate feel as comfortable as possible, the certificate of interpretation evaluation include the following major components:

1) tasks requiring error identification, analysis and discussion;

2) situations requiring interpretation from ASL to spoken English;

3) situations requiring interpretation from spoken English to ASL;

4) situations requiring interpretation from spoken English to ASL and from ASL to spoken English.

Vote: Unanimously passed

Rationale:

The period of time during which the candidate is helped to feel as comfortable as possible is not to be part of the evaluation. That is, a candidates' behavior (positive or negative) during this time is not considered part of the behaviors that will be assessed during the evaluation.

The error analysis tasks (#1) are included to be able to assess the candidates' ability to identify errors in the interpretation process and to offer constructive ways of rectifying those errors. What is meant here by error analysis is not "did the interpreter use the correct sign or word in an interpretation", but rather a more role-oriented view of errors in the interpretation process. This role-oriented error analysis, using videotaped stimulus material, would focus on issues such as: is the interpreter functioning in his/her role appropriately? is the interpreter functioning in a manner that is in conflict with the Code of Ethics?

The various types of interpretation situations to be included in the evaluation (#2, #3, #4) more closely reflect reality (i.e. interpretation into one language for an entire situation or interpretation into both languages within a single situation).

Motion VI: (M.W./D.C.)

I move that the NESSC recommend that after initial introductions and helping the candidate feel as comfortable as possible, the certificate of transliteration evaluation include the following major components:

1) tasks requiring error identification, analysis and discussion;

2) situations requiring transliteration from PSE/intermediate sign varieties to spoken English;

3) situations requiring transliteration from spoken English to PSE/intermediate sign varieties;

4) situations requiring transliteration from spoken English to PSE/intermediate sign varieties and from PSE/intermediate sign varieties to spoken English.

Vote: Unanimously passed

Rationale:

The period of time during which the candidate is helped to feel as comfortable as possible is not to be part of the evaluation. That is, a candidates' behavior (positive or negative) during this time is not considered part of the behaviors that will be assessed during the evaluation.

The error analysis tasks (#1) are included to be able to assess the candidates' ability to identify errors in the transliteration process and to offer constructive ways of rectifying those errors. What is meant here by error analysis is not "did the transliterator use the correct sign or word in a transliteration", but rather a more role-oriented view of errors in the transliteration process. This role-oriented error analysis, using videotaped stimulus material, would focus on issues such as: is the transliterator functioning in his/her role appropriately? is the transliterator functioning in a manner that is in conflict with the Code of Ethics?

The various types of transliteration situations to be included in the evaluation (#2, #3, #4) more closely reflect reality (i.e. transliteration into English or 'PSE'/an intermediate sign variety for an entire situation or transliteration into both within a single situation). It is recognized that during the test design and construction phase attention will have to be given to specifying and clarifying what is meant by 'PSE'/intermediate sign varieties.

Motion VII: (B.C./D.C.)

I move that the NESSC recommend that the evaluation for the certificate of interpretation consist of the following assessment domains (which will be further specified during test design and construction):

1) Interpretation Accuracy, which will consist of the general categories of:

- accuracy of content conveyed;
- accuracy of speaker/signer affect conveyed;
- accuracy of cultural considerations.

2) Target Language use:

- acceptability and appropriateness of spoken English;
- acceptability and appropriateness of ASL.

3) Interpreter role:

- ethical behavior and performance during interpretation tasks.

Vote:Unanimously passed

Rationale:

There are three areas that will influence the overall quality of a candidates' performance: how well/accurately the message is interpreted, how well/accurately the target language is used during interpretation tasks, and the candidates ethical and professional behavior and performance during the interpretation tasks. In specifying each of these areas as assessment domains, it is possible to obtain a much more accurate and thorough evaluation of a candidates' performance.

It is recognized that the weighting and relative importance of each of these major categories (as well as that of the sub-categories) will have to be determined during the test design, construction, and validation phase. Additionally, for the first time the importance of cultural aspects that may affect the message being interpreted have been recognized. Also, how well a candidate uses the Target Languages (as determined/required by consumers) while interpreting is recognized as a significant factor. Since that factor alone can often determine deaf and hearing consumers' judgements of each other, it is important to assess a candidates' use of the Target Languages to meet the needs of consumers.

Motion VIII: (B.C./M.W.)

I move that the NESSC recommend that the evaluation for the certificate of transliteration consist of the following assessment domains (which will be further specified during test design and construction):

1) Transliteration Accuracy, which will consist of the general categories of:

- accuracy of content conveyed;
- accuracy of speaker/signer affect conveyed;
- accuracy of cultural considerations.

2) Target Language use (acceptability and appropriateness of spoken English) and sign use (acceptability and appropriateness of PSE/intermediate sign varieties).

3) Transliterator role:

- ethical behavior and performance during transliteration tasks.

Vote:Unanimously passed

Rationale:

There are three areas that will influence the overall quality of a candidates' performance: how well/accurately the message is transliterated, how well/accurately English and 'PSE'/intermediate sign varieties are used during transliteration tasks, and the candidates' ethical and professional behavior and performance during the transliteration tasks. In specifying each of these areas as assessment domains, it is possible to obtain a much more accurate and thorough evaluation of a candidates' performance.

It is recognized that the weighting and relative importance of each of these major categories (as well as that of the sub-categories) will have to be determined during the test design, construction, and validation phase. Additionally, for the first time the importance of cultural aspects that may affect the message being transliterated have been recognized. Also, how well a candidate uses English and 'PSE'/intermediate sign varieties (as determined/required by consumers) while transliterating is recognized as a significant factor. Since that factor alone can often determine deaf and hearing consumers' judgements of each other it is important to assess a candidates' use of English and 'PSE'/intermediate sign varieties to meet the needs of consumers. It is recognized that in the test design and construction phase attention will have to be given to specifying and clarifying what is meant by "PSE"/intermediate sign varieties).

Motion IX: (N.L./D.C.)

I move that the NESSC recommend that the materials used for the interpretation and trasnsliteration evaluations meet the following criteria:

1) all materials be on videotape;

2) the materials consist of a range of real-life situations, natural language styles, and people;

3) the materials be as interactive as possible;

4) each situation be immediately preceeded by an introduction of the consumer(s) who will provide background information about the up-coming interpreting or transliterating task;

5) the materials be constructed in such a way that, after the consumer introduction (#4), the candidate has the option of declining the assignment. (A yet-to-be-specified number of assignments may be declined, while a yet-to-be-specified number of assignments must be accepted);

6) several sets of matched forms be prepared;

7) individuals appearing on the actual evaluation materials also appear in materials available for use in the warm-up room.

Vote:Unanimously passed

Rationale:

Placing all interpretation or transliteration tasks on videotape will help ensure the validity of evaluation materials since candidates will have visual information about all speakers/signers in any situation (including situations that only call for voice-sign interpretation or transliteration). This will enhance the candidates' awareness of speaker/signer affect. That a range of situations, language styles (not written or memorized), and people (not professional readers or actors) is called for is simply a reflection of reality. It is suggested that, in any of the various situations that call for a doctor or nurse, for example, or any specific occupation, actual doctors or nurses be used rather than selecting individuals to "role-play" a doctor or nurse. This will help to ensure that monologues and dialogues are natural and reasonable, further contributing to the validity of the evaluation materials.

Preceeding each situation with a consumer introduction merely recognizes that, in general, interpreters and transliterators are provided with certain background information about an assignment before the assignment begins. This introduction is not to be interpreted by the candidate but is provided to help mentally prepare the candidate for the up-coming assignment. Also, this provides another opportunity for candidates to become familiar with or ask questions about the consumers (beyond the level of familiarity that will be available in the warm-up materials).

The opportunity to decline a certain number of assignments also reflects reality since, after being provided with a certain amount of background information about an up-coming assignment, candidates will be able to assess their own skills and knowledge as they pertain to that situation and decide to accept or decline the assignment. This also provides an opportunity to observe candidates' ethical and professional behaviors in determining whether or not they feel able to accept a particular assignment. There is no penalty assessed, nor negative reflection on the candidate for declining an assignment (although a pre-determined number of assignments must be accepted). The actual evaluation of candidates will not begin until after a particular assignment has been accepted.

Unlike the present evaluation materials, the interactive materials suggested here are designed to realistically reflect the fact that many situations require, for example, interpretation both from ASL to spoken English and from spoken English to ASL. This is especially true in "one-on-one" situations. This will also provide an opportunity to assess a candidates' ability to appropriately and quickly switch Target Languages.

The purpose of having several matched forms is to maintain the validity and integrity of the evaluation materials in the event of re-evaluations. Exactly what is meant by "matched" forms will have to be determined during test design and construction. Certainly, forms will have to be matched for difficulty, but whether this requires matching for situations and individuals remains to be determined.

Motion X: (B.B./N.L.)

I move that the NESSC recommend that evaluators of candidates for the certificate of interpretation include:

1) Trained and qualified hearing interpreter(s) who will evaluate candidates for interpretation accuracy, content, affect, and cultural factors;

2) Trained and qualified deaf consumer(s) who will evaluate candidates on appropriateness and acceptability of Target Language use (ASL);

3) Trained and qualified hearing consumer(s) who will evaluate candidates on appropriateness and acceptability of Target Language use (English);

4) A trained and qualified monitor (who will not be an evaluator) who will monitor the evaluation proceedings.

Vote: Unanimously passed

Rationale:

The primary reason for this composition of the evaluation team is to divide the evaluation task among individuals who are able to accurately evaluate the different parts of the process. This division of labor also recognizes that there are some elements of the interpretation process that consumers (deaf and hearing) can successfully and accurately evaluate and there are some elements that can only be evaluated successfully and accurately by an interpreter.

The monitors' task is to provide feedback to the evaluators on their performance and their adherence to the evaluation procedures, and to oversee the environmental and procedural aspects of the evaluation. Also, the monitor would be able to provide documentation and support for a candidate or the evaluation team in the event of an appeal.

It is also recognized that the evaluators and monitors must be carefully trained and selected. However, this training and selection can only occur after major portions of test design, construction, and validation have taken place.

Motion XI: (B.D. M.U.)

I move that the NCSSC recommend that evaluators of candidates for the certificate of transliteration include:

1) Trained and qualified hearing transliterator(s) who will evaluate candidates for transliteration accuracy, content, affect, and cultural factors;

2) Trained and qualified deaf consumer(s) who will evaluate candidates on appropriateness and acceptability of Target Language use (PSE/intermediate sign variety);

3) Trained and qualified hearing consumer(s) who will evaluate candidates on appropriateness and acceptability of Target Language use (English);

4) A monitor (who will not be an evaluator) who will monitor the evaluation proceedings.

Vote: Unanimously passed

Rationale:

The primary reason for this composition of the evaluation team is to divide the evaluation task among individuals who are able to accurately evaluate the different parts of the process. This division of labor also recognizes that there are some elements of the transliteration process that consumers (deaf and hearing) can successfully and accurately evaluate and there are some elements that can only be evaluated successfully and accurately by a transliterator.

The monitors' task is to provide feedback to the evaluators on their performance and their adherence to the evaluation procedures, and to oversee the environmental and procedural aspects of the evaluation. Also, the monitor would be able to provide documentation and support for a candidate or the evaluation team in the event of an appeal.

It is also recognized that the evaluators and monitors must be carefully trained and selected. However, this training and selection can only occur after major portions of test design, construction, and validation have taken place. It is also recognized that in the test design and construction phase attention will have to be given to specifying and clarifying what is meant by "PSE"/intermediate sign varieties.

Motion XII: (N.L./P.B.)

I move that the NESSC recommend that administration of the CI and CT evaluations meet the following criteria:

1) evaluations conducted on a regional basis at appropriate permanent institutional facilities;

2) evaluations be conducted at pre-set dates at each site;

3) written pre-requisite tests be administered by local chapters;

4) scoring of all written and performance tests be done under the auspices of the national organization;

5) each candidate's performance evaluation be recorded on videotape and saved for a specified period of time;

6) candidates be notified of their evaluation results by the home office via registered mail return receipt required.

Vote: Unanimously passed

Rationale:

The administration of the evaluation on a (yet-to-be-specified) regional basis is an attempt to rectify the extreme variability in evaluations presently being conducted by local evaluation teams. This will also reduce the number of evaluators to a more manageable number which will enable more frequent and in-depth reliability checks. Housing the evaluations at appropriate institutions will allow more standardized environmental testing conditions, more control over materials (e.g. each site would have a permanent set of materials and the need for replacement of materials would be minimized). Scoring of all evaluations under the auspices of the national organization, as is presently done, would reduce the possibilities of bias and allow the organization to monitor the performance of evaluators.

The intent of allowing the written pre-requisite written test to be administered by local chapters is simply to make the test more available to applicants. It is also intended that the written test be available at all regional and national conventions.

Videotaping each evaluation and holding the tape for a specified period of time will allow the candidate and the organization a greater measure of protection than is currently available in the event of an appeal. For example, each candidate's videotape could be retained for ninety (90) days after the candidate has been notified of the evaluation results (hence the need for sending results by registered mail). If the candidate appeals the evaluation results, then the videotape (and, if germaine to the appeal, the monitor's report) would be re-evaluated by a new team of evaluators. Once the appeal period had expired, the tape would be erased. Additionally, the videotapes could be used, if appropriate releases were obtained, for training new evaluators, for providing feedback to evaluation teams, for checking the reliability and performance of the evaluators, and for other specified research projects.

Motion XIII: (B.B./N.L.)

I move that the NESSC recommend that individuals presently certified by the RID be evaluated through the proposed new system by a staggered phase-in over a specific number of years once the proposed system is implemented.

Vote:Unanimously passed

Rationale:

The committee recognizes that this is an extremely delicate issue for some of the RID members who currently hold certification. However, it is felt that in order for the national organization to have confidence in and be able to endorse the skills of certified individuals, and to be equitable to all members, such a staggered phase-in is necessary. For those who have yet to be re-evaluated, phasing in the proposed system simply means that they would be evaluated under the proposed system. Those individuals who will be most affected are individuals who have already been re-evaluated under the present system. The committee recommends that they also be evaluated under the new system. Members who have been re-certified under the current system should have their certification extended for a reasonable period of time until such time as they are able to be evaluated through the proposed system. It is felt that these individuals will recognize the fact that the proposed system assesses a different set of factors than the present system assesses and, hence, the need for evaluation under the proposed system.

There are several suggestions for the staggered period of time under which currently certified members would be phased-in: e.g. a specified period of time from the expiration date of an individuals' current certification, a specified period of time from the date of individuals' initial certification. Additionally, the committee recognizes that the current Certification Maintenance Program is in need of revision. It is possible that for some members phasing-in of the proposed evaluation system would be accomplished under the revised Certification Maintenance Program.

**Motion XIV:** (B.C./M.W.)

I move that the NESSC recommend that any proposed evaluation system, when in place, be financially self-sustaining. Specifically, any evaluation system must collect sufficient fees to:

1) pay evaluators and monitors;

2) cover costs of test administration and scoring;

3) cover the cost of replacement materials as needed.

Vote: Unanimously passed

**Rationale:**

One of the main factors contributing to the current financial situation facing the RID has been the use of general membership monies to support the evaluation system. The committee feels that evaluation fees should be sufficient to support the evaluation system without attaching general membership dues which should be used for general membership services. It is recognized that this will undoubtedly mean an increase in evaluation fees. Appropriate compensation for the evaluators (commensurate with the training and level of quality performance expected of them) for example, will necessitate an increase in evaluation fees. However, it is felt that the membership will be willing to bear the expense in order to implement a valid and reliable evaluation that is fairly administered.

**Motion XV:** (B.C./D.C.)

I move that the NESSC recommend that the RID, Inc. obtain and allocate funds sufficient for the development of the evaluation system proposed by the NESSC and that said funds be placed in a restricted account.

Vote: Unanimously passed

**Rationale:**

The scope of the proposed evaluation system will require sufficient development funds to retain consultants to develop, pilot test and modify all phases of the evaluation (for example, design of all tests, training evaluators and monitors). The proposed system cannot proceed without adequate financial support. Thus, funding sources must be sought to enable development of the system (development grants, funding from the private sector). Placing these funds in a restricted account will help to maintain the financial integrity of the system. In short, sufficient funds must be obtained and allocated to accomplish all development and training necessary to implement the system.

## NES STUDY COMMITTEE
## EVALUATION SYSTEM FRAMEWORK

The NES Study Committee has adopted the following framework to facilitate the task of making recommendations for the RID Evaluation System. By analyzing the Evaluation System in this way the committee is able to more clearly isolate specific issues and membership concerns. The committee, in applying this framework to one category of certification (as indicated below), feels that the framework allows for a comprehensive review of the various facets of the Evaluation System. It is the Committee's intention (pending membership input) to apply this framework to the remaining certification categories.

(1)
### Certificates Awarded

Specification of individual certificates to be awarded & target membership population for each certificate.

[redacted]

(2)
### Performance Standards

Specification of the stated or implied level of performance for each certificate awarded.

(Refer to NESSC 7/24
Motion II)

(3)
### Prerequisite Skills/Knowledge

Specification of the skills & knowledge an individual must possess before applying for a given certificate.

(Refer to NESSC 7/24
Motion III
Refer to NESSC 7/24
Motion IV)

(4)
### Evaluation Components

Specification of the specific tasks or situations to be included in the evaluation for a given certificate.

(Refer to NESSC 7/24
Motion V
Refer to NESSC 7/24
Motion VI)

(5)
### Assessment Domains

Specification of the skills & behaviors to be tested or assessed in the evaluation for a given certificate.

(Refer to NESSC 7/24
Motion VII
Refer to NESSC 7/24
Motion VIII)

(6)
### Assessment Materials

Specification of certain criteria to be followed in developing, producing, and using materials in the evaluation for a given certificate.

(Refer to NESSC 7/24
Motion IX)

(7)
### Evaluation Team

Specification of groups of individuals who comprise the evaluation team & the assessment domains that each group is responsible for assessing during the evaluation for a given certificate.

(Refer to NESSC 7/24
Motion X
Refer to NESSC 7/24
Motion XI)

(8)
### Administration Logistics

Specification of factors pertaining to the administration & scoring of the evaluation for a given certificate.

(Refer to NESSC 7/24
Motion XII)

(9)
### Implementation Considerations

Specification of the manner in which committee recommendations are to be phased-in.

(Refer to NESSC 7/24
Motion XIII)

(10)
### Economic Considerations

Specification of factors pertaining to the fiscal solvency of the entire Evaluation System & of the fees & costs for a given evaluation.

(Refer to NESSC 7/24
Motion XIV
Refer to NESSC 7/24
Motion XV)

## Developing Criteria for the National Evaluation System

In order to best evaluate the present evaluation system and to guide the development of any future revisions or developments, it is essential that certain criteria be established as a means of assessing any evaluation system (including materials specifications and development, scoring procedures, administration details, reliability and validity issues, and stated or implied meaning of any resultant certificate). Such a set of criteria would provide a "blueprint" against which the present evaluation system could be viewed and would provide a coherent and efficient means of dealing with the extensive list of issues confronting the NES Study Committee.

In short, a list of criteria would provide:

1) An orderly way of reviewing and assessing the entire National Evaluation System;

2) An efficient use of the time of the NES Study Committee;

3) An evaluation plan that could be used in the development of future materials and revisions to the present NES;

4) A cost-effective way for the NES Study Committee to proceed;

5) A concrete report that can be presented for feedback to the members at the convention;

6) An objective way of analyzing and reviewing the present (and any future) NES.

### Suggested Criteria Categories

General Criteria:

1) Certificates Awarded:
   - a) Certificate structure scope
   - b) Interpretation Certificate(s)
   - c) Transliteration Certificate(s)
   - d) Specialist Certificates:
     - i) require both Interpretation and Transliteration certificates?;
     - ii) assess an individual's ability to interpret and transliterate in specific situations?;
   - e) etc.

2) Stated or Implied Standards of Performance:
   - a) Certification by the RID should represent an endorsement of quality and should represent a guaranteed minimum level of competence;
   - b) No certification for "partially competent" performance;
   - c) Certification represents passage of a rigorous assessment of skills;
   - d) etc.

3) Prerequisite or Assumed Skills:
   - a) Any RID evaluation should be an evaluation of interpretation/transliteration skills and should not be confused with an assessment of language skills; therefore, prerequisites to taking any national evaluation should include:
     - i) Demonstrated Conversational Competence in English;
     - ii) Demonstrated Conversational Competence in ASL;
     - iii) Demonstrated Conversational Competence in intermediate varieties of signing;
     - iv) Demonstrated knowledge of ethics and general knowledge of the field;
   - b) etc.

3) Evaluation Components:
- a) Interpretation:
  - Source Language = English
  - Source Language = ASL
- b) Transliteration:
  - Source Language = English
  - Source Communication Code = Intermediate Signing Varieties
- c) Interview (?)
- etc.

4) Evaluation Materials:
- a) Representative of "real life" situations;
- b) As interactive as possible (excepting lecture situations);
- c) Natural language usage - no memorized material;
- d) A range of situations to be included;
- e) Background information on each situation provided prior to each performance evaluation;
- f) Each evaluation situation begins with the Deaf and/or hearing consumers providing brief introductory remarks to enable the candidate to become familiar with the consumer;
- g) Situations to include assessment of "integreted" interpretation/transliteration skills;
- etc.

5) Performance Assessment Domains:
- a) Interpretation Skill/Accuracy
  - i) message/content equivalence
  - ii) speaker/signer style, affect and mood equivalence
  - iii) cultural equivalence issues
  - iv) etc.
- b) Transliteration Skill/Accuracy
  - i) message/content equivalence
  - ii) speaker/signer style, affect and mood equivalence
  - iii) etc.
- c) Target Language
  - i) Lexical and Syntactic Accuracy
  - ii) Stylistic/Registral Acceptability
  - iii) Intelligibility/Legibility
  - iv) etc.
- etc.

6) Administration Logistics:
- a) Regional administration of performance evaluations at selected "accredited" institutions (maximum = 3 per region);
- b) Local chapter administration of written portions; scoring done at/through the Home Office;
- c) Ideally, prerequisite tests (Sign and English) administered and scored by organizations/agencies other than the RID;
- d) Only total evaluations are administered to first-time applicants
- e) Success in part of the evaluation means the candidate does not have to re-take that portion if the remaining portion(s) is re-taken within one year;
- etc.

7) Qualifications and training of evaluators:
- a) Training of potential evaluators;
- b) Certification of evaluators;
- c) Periodic reassessment of evaluators;
- etc.

8) Phasing in any revised system:
    a) Deadline for all present certified members to be reevaluated under the new system (e.g. 7 years)
    b) Selection of administration sites;
    c) Identification of potential regional pool of evaluators;
    d) Development of sufficient materials so that they can be pilot tested before administration;
    e) Development of several forms before initial administration;
    f) etc.

9) Economics
    a) The evaluation system must be financially self-sufficient;
        i) fees charged must be sufficient to cover scoring costs;
        ii) fees charged must be sufficient to provide monies for development of new materials on a periodic basis;
        iii) evaluators must be paid for their time;
    b) Grant monies must be sought to underwrite development costs:
        i) for the total system
        ii) for a portion of the system (e.g. the Department of Justice for the Legal portion)
        iii) for the training of evaluators
    etc.

Senator DeConcini. Thank you, Mr. Cokely.

Mr. Lee.

## STATEMENT OF ROBERT JOE LEE

Mr. Lee. Thank you very much. I will be very brief. I would like to emphasize one point and comment on two things that have occurred to me in retrospect.

I would like to emphasize that when our task force in New Jersey began its work, we had the mandate to evaluate what interfered with the accessibility to the courts for linguistic minorities. So we took a very comprehensive and systems approach and tried to identify the things that interfered with the accessibility of linguistic minorities to any phase of court proceedings or support services of the judiciary.

I am inclined to think, and I believe our task force would support this, that the diversity of needs that linguistic minorities present to the courts cannot be handled as the act presently exists. It does not extend to protecting depositions and documentary evidence according to the same standard of quality that interpreted proceedings enjoy. I will not mention the other examples that are included in my written testimony. The basic point I would like to make is that if we are going to try to make sure that linguistic minorities do have equal access to the courts, you may want to consider extending the bill's focus in a number of respects which I have articulated in my remarks.

The first thing that I forgot to include in my written remarks is this: Since there is no record of what a witness says in a foreign language, such as through a tape recording, there is no ability to contest accuracy of interpretation on appeal. Until there is certification for all languages, it seems to me and our task force that it would be desirable to have some means of making a record of such testimony through a videotape for deaf witnesses or sound recording for other witnesses.

The last thing I will say is that I think there may be a danger in placing too much weight on certification as the solution to all of our problems. Absent clear, written standards for circumscribing how judges, attorneys, and interpreters function in an interpreted proceeding, absent ongoing training and professional development of interpreters, and absent ongoing evaluation and monitoring of the performance of people who are certified or are otherwise qualified, certification, I do not believe, can bear the responsibility that it presently appears to have.

That is why in our State we are hoping to have a holistic approach to assuring that interpreted proceedings are served by qualified persons through certification or a combination of other things that would assure quality court interpreting.

[The prepared statement and responses to written questions follow:]

## PREPARED STATEMENT OF ROBERT JOE LEE

### Introduction

Thank you for inviting me to report on the findings and recommendations of the New Jersey Supreme Court Task Force on Interpreter and Translation Services and to comment on the Court Interpreters Improvement Act of 1985. This Act is yet another indication of the critical nature of the services required if linguistic minorities are to enjoy equal access to the courts of this land. Since our Task Force began its work early in 1981, we have seen a tremendous increase in the number of state and local jurisdictions advocating for signifcant reform in this area. Since much of this, including many of the recommendations of our own Task Force, was inspired by the Federal Court Interpreters Act of 1978, and since many state and local jurisdictions look to such precedents set by Congress when considering possible changes at home, I am especially glad to see that some of the limitations of that act have been recognized and now have a chance of being corrected.

I will begin by summarizing, as you have requested, the findings of our Task Force and noting some of the actions the Judiciary in New Jersey has taken to move forward as a result of the Task Force's efforts. This will provide a context and foundation for the remarks I will make later about the Court Interpreters Improvement Act of 1985. While my critique of the Act will be consistent with the findings and recommendations of the Task Force, I do not necessarily represent the Task force at this hearing.

### Summary of the New Jersey Experience

Robert N. Wilentz, Chief Justice of the New Jersey Supreme Court, created the Task Force in response to growing numbers of linguistic minorities appearing in the courts[1] and the desire to assure that they would enjoy equal access to New Jersey's Superior and Municipal Court. He asked the Task Force (1) to identify all areas of the Judiciary where equal access may not be fully available due to linguistic barriers, (2) to document the nature and extent of barriers in policy and practice, (3) to recommend policies and programs which would ensure equal access, and (4) to submit strategies for implementing the recommendations.

The Task Force embarked upon an extensive program of research which sought to put the Task Force in the position of being able to make its recommendations on the basis of the state-of-the-art knowledge regarding the professions of court interpretation, legal translation, and the cross-cultural delivery of services; the rights of linguistic minorities; linguistic and sociolinguistic dimensions of effective communication across cultures, levels of literacy and familiarity with legal concepts and procedures. In addition, the Task Force sought to document the state of affairs in New Jersey by (1) surveying judges, court interpreters, bilingual court support personnel, county prosecutors, public defenders, attorneys with legal services, bilingual attorneys and deaf persons who had been to court ("consumer" survey), (2) interviewing all court administrators and many court interpreters and bilingual court support personnel, and (3) evaluating in an objective manner the performance of persons interpreting in live situations for Spanish-speaking litigants.

After four years of extensive work, the Task Force released its report,[2] arriving at the following summary conclusion:

> The special needs of linguistic minorities who have sought relief in or been brought before the courts of New Jersey have not been adequately met by the present approach of leaving to each judge, administrator or employee of the court support services at the county or municipal level the responsibility of eliminating the language barrier.[3]

This general statement may be expanded further. The Task Force that there was considerable unfamiliarity with and lack of sensitivity to the importance and complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds. The same lack of familiarity and sensitivity was found for other justice agencies as well as human service organizations upon which the Judiciary often relies for support services.

The first major finding was that only hearing impaired persons in New Jersey had a right to interpreters of a clearly defined level of competency, i.e., persons certified by the Registry of Interpreters for the Deaf. Absent such guidelines for all other language groups, the most available resources tended to be used. Although most courts appeared to make efforts to use the most qualified interpreter available, considerations of budget or availability often precluded the use of professional interpreters. This resulted in a widespread practice of allowing virtually anyone to interpret with no obligation to demonstrate competence. Hence the Task Force found that most interpreting in the courts were provided by parties' friends, relatives or other laypersons. Even though judges presiding over criminal matters used such laypersons less than judges presiding over other kinds of matters, half of these judges had used such lay interpreters and 30% had used bystanders who happened to be in the courtroom.

The Task Force found five specific elements of this problem. First, the skills that court interpreters must possess had not been identified and the level of proficiency at which those skills must be performed had not been determined. Accordingly, no means of demonstrating competency was available. The only test given in the state was administered by the Department of Civil Service and it did not validly or reliably assess competence. Second, the Task Force found that many judges, clerks and court administrators did not understand the skills that are required for competent court interpreting. For example, one widespread assumption was that being bilingual would be sufficient. Third, the lack of qualified, professional court interpreters was found to be exacerbated by the lack of educational resources. The Task Force found no meaningful training of existing court interpreters by the courts and extremely inadequate resources in the state's and region's institutions of higher education for the purposes of training persons for entry into this profession. Fourth, no canons of ethics were found to guide court interpreters in the conduct of their profession. Neither they nor judges, attorneys, litigants, court administrators or anyone else were sure what the ethical parameters of their services involved. Finally, there was no consensus on the role of the court interpreter. For example, some thought the court interpreter should mimic a witness, others not. Some thought the court interpreter should give advice, others not.

The Task Force wanted to have some indication of the degree to which the lack of clear policy regarding competency affected the quality of services rendered. We designed and carried out a project in which trained evaluators completed a scoring device on almost all Spanish-English interpreters in the courts known to have the largest volumes of interpreted proceedings. Our consultants observed forty-two persons serving as court interpreters in live situations. This study found that only 17% of the persons observed met or exceeded the minimum level of proficiency determined by the Task Force to be acceptable. This included 5 of 12 official, full-time court interpreters in the Superior Courts; 1 of 6 official, full-time court interpreters in the Municipal Courts; 1 of 2 free-lance court interpreters; none of three attorneys; none of 14 other judicial employees; none of 3 relatives/friends of litigants; nor the one person randomly picked in a courtroom. It was especially noteworthy that only one of twenty-five interpreters who were observed in the Municipal Courts performed at the minimum level of proficiency.

Although no similar evaluation was performed of interpreters for other language groups, we inferred that the quality of such interpreting would likely be even less adequate for these groups, with the probable exception of hearing impaired persons. This conclusion was based on the following: The Task Force found further that the courts were much less likely to provide interpreters for persons speaking languages other than Spanish and Ameslan. Hence most interpreting for other language groups was found to be performed by friends or relatives[4] and the use of professional interpreters was significantly less. Hence there was an uneven burden for different language groups among the litigants, something the Task Force thought raised the question of equal protection of the laws.

In an attempt to estimate the likely effects of such inadequate interpreting we asked the evaluators to identify every aspect of performance they were measuring in terms of whether, in their judgment, deficient performance lead to an actual or potential effect of a negative nature on the outcome of the proceeding. They reported one or more deficient aspects of performance in 73 of 142 cases. This suggested to us that about half of all interpreted Spanish-English proceedings in New Jersey might involve interpreting errors of a substantive nature.

The second major finding was that access to court interpreters supplied by the court was uncertain in three respects. First, there were no guidelines that defined the degree of limited English proficiency at which a person must communicate in order to qualify for a court interpreter. Absent such direction, some judges were found to grant all requests for a court interpreter as a matter of policy while most judges did so only after varying degrees of questioning/testing persons who requested an interpreter in an effort to determine whether they really spoke English. The Task Force concluded that most judges did not have the linguistic competence to make such a determination and that many determinations were arbitrary and often erroneous.

One concern that was discovered in this context was the potential for judges to say things in the presence of juries that questioned whether a defendant in a criminal trial really needed an interpreter. The Task Force believed such a practice could prejudice the jury in terms of the defendant's credibility and character. Jurors might think, consciously or subconsciously, "If the judge thinks this character is falsifying a request for an interpreter, then he must be untrustworthy." The effects of such thinking on the fairness of the proceeding are obvious.

The second feature of access to court interpreters concerns the determination of the instances in which litigants have the right to interpreters supplied by the court. There appeared to be a consensus of opinion that the courts were obligated to pay for the interpreter who interprets the testimony of witnesses in criminal trials and that parties were responsible for court interpreters in almost all civil matters. However, there was no consensus in criminal courts regarding who must pay for counsel-table interpreting of trial proceedings for defendants, who is obligated to ensure that defendants can communicate effectively with defense counsel, or who is responsible for providing interpreters at other stages. Such responsibilities were even fuzzier in the Municipal Courts and in the courts handling other matters (e.g., family, landlord-tenant and small claims). Hence court interpreters were found to be supplied for certain types of cases in some counties or municipal courts but not in other counties or municipal courts.

Third, access was problematic in many instances because there simply were not enough interpreters. In some counties this was a problem only during times when the volume of linguistic minorities appearing in the courts was unusually high. In other counties there simply were not enough interpreters at any point in time. Such unavailability to secure this service in a timely fashion was found to be a major cause of resorting to using less qualified interpreters.

The third major finding was that the conduct of interpreted proceedings suffered from the lack of clear guidelines. This resulted in highly idiosyncratic practices that had the result of prejudicing the rights of linguistic minorities, a list of the most important of which follows.

(1) Interpreter oaths--when should they be administered and what oath should be administered? Should oaths be uniform across all courts?

(2) Clarification of interpreter's role to parties, witnesses and jurors--who is responsible for seeing that all critical actors understand the role of a court interpreter and assure that the use of a court interpreter will not bias the outcome of a proceeding due to sociolinguistic prejudices?

(3) Admission of statements made by linguistic minority defendants to law enforcement officials--what obligation does the court have to satisfy itself that such statements are taken through competent interpreters? This includes the efficacy of Miranda warnings, too.

(4) Record of interpreted proceedings--when should a permanent record be made of what is said in the source languages which are interpreted into English? Furthermore, should a tape recording be made of the simultaneous interpretation of the proceedings being provided to the defendant in a criminal trial? Absent a tape recording of oral testimony or a video record of Ameslan testimony, the ability to raise adequacy of interpreting on appeal is all but precluded.

(5) Errors of court interpreters--how should allegations of errors of interpretation be resolved? Who can challenge an interpreter, on what grounds, and how should such challenges be settled? What role should the presiding judge play?

(6) Modes of interpreting--which mode is appropriate for the various types of persons at different stages of each type of court proceeding?

(7) Difficulties encountered by interpreters--what should an interpreter do when a word or phrase has no equivalent in the target language, a word or phrase in the source language is not known to the interpreter, or some other problem of interpretation arises?

(8) Interpreter fatigue--what should be done to prevent exhausting court interpreters and thereby prevent an increase in the incidence of errors as a proceeding progresses over time and exhaustion begins to take its toll?

(9) Use of languages other than English by judges and attorneys--under what

circumstances, if any, should judges and attorneys be allowed to speak languages other than English?

(10) Depositions and documentary evidence in foreign languages--since such evidence can play a critical role in the evidentiary arsenal of adversaries, what obligation does the court have of assuring that such evidence is interpreted at the same level of competency as any other witness' testimony?

In addition to the three major findings I have reported thus far, all of which bear on court interpreting, our Task Force found it necessary to address the accessibility of the courts to linguistic minorities in two other respects. First of all, the Task Force found that the procedural forms and documents[5] used in the routine processing of cases were not uniformly available in Spanish translation and that all of the forms that had been translated were defective in substance (i.e., accuracy of translation from source to target language), style (i.e., grammatical accuracy within the language), or both. Furthermore, no form had been translated into any language other than Spanish.

Secondly, we discovered that court support services were not generally provided by bilingual and bilingual/multicultural personnel with essential skills, knowledge and training. The needs presented by linguistic minorities to the courts are not limited to what occurs in the courtrooms. Court support personnel, most notably Probation Officers, supply a host of support services that are just as dependent upon successful communication for the effective and efficient administration of justice as what happens in courtrooms. The most obvious example is the investigative report. We found errors ranging from the insignificant to the significant in some presentence reports. Such errors were attributed to one or more of the following: the use of incompetent or inappropriate interpreters such as other prisoners, the unfamiliarity of the officer with the defendant's culture, or unfamiliarity with the dynamics of intercultural communication, much less skill at communicating across cultures. We found, for example, that many Hispanic defendants were being labeled as having an AKA when they in fact did not have an AKA. This happened largely because of an unfamiliarity with Hispanic naming conventions and resulted in the negative implication carried by an AKA that would obviously be unfair in such circumstances. Another major concern the Task Force discovered was that absent effective communication with linguistic minority clients by court support personnel, clients sometimes did not fully understand their obligations. For example, we documented some instances of bail revocation, probation revocation and the like that occurred when clients violated rules they had not clearly understood.

The final major finding of the Task Force was that court interpreting, legal translating and bilingual services were not adequately managed at any level of court administration. For example, innovative initiatives of the recent and distant past were discovered which mysteriously never materialized, there was no accounting of the volume or cost of interpreted proceedings, recruitment of staff and per diem interpreters was haphazard, rates of pay were uniformly incommensurate with the skills required and ranged widely for both staff and per diem interpreters, and staff and per diem interpreters were largely unsupervised. Furthermore, there was limited coordination of policy on a statewide basis and there was no ongoing, administrative presence that would monitor the delivery of these services and advocate on behalf of needed resources and changes before the Supreme Court and other principal administrators in the Judiciary.

Rather than itemize the recommendations of the Task Force, I think it will suffice to indicate the actions that have been taken in response to the report. First of all, a major effort to improve the quality of interpreting performed in the courts has been undertaken. The Administrative Office of the Courts provided scholarships last summer for twenty court employees to attend an intensive institute for court interpreters and we plan to do the same again this summer. The Supreme Court has approved a gradual movement in the direction of requiring certification of all court interpreters, the initial stages of which include prohibiting certain classes of persons from interpreting and screening all existing interpreters on a preliminary basis pending availability of certification testing. Finally, the Supreme Court has authorized a process that will lead soon to the promulgation of Canons of Ethics for court interpreters and legal translators.

Secondly, a permanent administrative capacity has been established. The Administrative Director of the Courts created the Court Interpreting, Legal

Translating and Bilingual Services Section last December and the full complement of staff should be on board by mid-1986. Furthermore, the Supreme Court has approved the design and implementation of a statistical reporting system that will document the number and types of interpreted proceedings and help us prepare realistic budgets. In addition, the proposal to develop uniform job descriptions with clearly stated qualifications has been approved.

Third, the Supreme Court has approved a procedure that will result in the translation of uniform forms in the Spanish language. We will identify all forms used in all courts, rank them according to volume of use, and start producing authorized, uniform translations, working our way through the list beginning with the forms used the most.

Fourth, the Supreme Court will shortly be inviting the bench, bar and public to comment on the Task Force's proposed Standards for Interpreted Court Proceedings. Like the Canons of Ethics, this will lead to the promulgation of standards approved by the Supreme Court and thereby binding in all courts.

Fifth, the Administrative Office of the Courts has begun to work on a trilateral basis with Montclair State College and the New Jersey Department of Higher Education to develop a curriculum for training court interpreters. Marilyn Frankenthaler and Nancy Lopez-Balboa of Montclair State College been awarded a substantial grant from the Department of Higher Education and a smaller grant including support staff from the Administrative Office of the Courts. This project is expected to lead to the establishment of at least three permanent programs for training court interpreters at institutions of higher education in New Jersey.

Sixth, every county probation department with any significant number of Spanish-speaking clients has been required to develop a plan to ensure that sufficient numbers of bilingual Probation Officers and other personnel are employed. This project will institionalize a specific number of bilingual positions in each department that is commensurate to the work load of Spanish-speaking clients.

Finally, the Supreme Court has asked the Administrative Office of the Courts to evaluate the Task Force's recommendations upon which no action has yet been taken and draft propose which recommendations should be approved, including a plan for implementing them. I want to emphasize that the Supreme Court has yet to reject a single proposal or recommendation.

One last comment must be made before moving on to the Court Interpreters Improvement Act of 1985. While the Task Force directed most of its recommendations to the Supreme Court, it also recommended that the Legislature enact a bill that would (1) establish a solid statutory foundation, including an appropriation of funds, upon which the Judiciary could develop a statewide, uniform system of delivering interpreting services with the assistance of full-time court interpreters on the state rather than county or municipal payroll; and would (2) create a State Board of Court Interpreting and Legal Translating which would certify both court interpreters and legal translators. A bill providing for both of those features was introduced in the last session but passed only the Assembly, failing to reach the Senate in time for a vote prior to the conclusion of the session. We are waiting to see what the fate of A-4175 will be if it is reintroduced in the new session of the Legislature. I should add that if the proposed Board is not established, the Task Force's fallback recommendation was that such a function be assigned, as in the Federal Courts, to the Administrative Office of the Courts.

Comments on the Court Interpreter Improvement Act[6]

Since our experience is exclusively with the administration of court interpreting services at the state and municipal levels, our ability to evaluate the Act is limited. On the one hand, I believe the substantive issues are the same regardless of whether the court in which interpreting occurs is Federal, state or municipal. On the other hand, there are obviously several process issues in the bill which are beyond our experience and expertise. Accordingly, my comments will be limited to the substantive issues.

I will comment first on the Act's revision of the authorized modes of court interpreting. The old standard of consecutive interpreting would be replaced by a standard of simultaneous interpreting for parties and consecutive mode for witnesses. Although it is worded differently, this amendment is very close to the recommendation of our Task Force. It is imperative that parties receive a running, simultaneous interpretation of everything that is occurring so they can be truly present and participate as fully as English-speaking parties. Accordingly, this feature of the Act is a significant improvement over its predecessor.

However, the section could be improved in two respects. First, there are occasions, e.g. arraignment and sentencing, when the provisions of the Act as presently worded may be inappropriate. The Task Force's position is that the simultaneous mode should be used for parties when they are in the position of a third person to communications, i.e. when they are not involved directly in discourse. However, when parties or witnesses are being directly addressed in the second person and are giving answers, whether on the witness stand or, for example, during arraignment and sentencing, interpretation should be in the consecutive mode.[7]

The section could be improved secondly by restricting the use of the summary mode of interpretation. In its present form, the Act may make it too easy to use the summary mode. I submit that the summary mode should be set apart from the consecutive and simultaneous modes, its limitations being clarified and its use being restricted to specifically named circumstances.

The second substantive feature of the Act would extend the obligation to use certified or otherwise qualified court interpreters to pretrial and grand jury proceedings. There can be no argument with this as far as it goes and it it is certainly true that "the statutory right to interpretation has been unnecessarily restricted."[8] However, again I wonder if it goes far enough. If one of the concerns of this Act is to assure the integrity of the fact-finding processes of the courts, especially the taking of evidence, then the quality of testimony given through depositions and documents originating in foreign languages should be protected by the same level of qualified translators as is testimony which is orally given through court interpreters from the witness stand. Furthermore, any investigation performed by Probation Officers or other support personnel should enjoy the same protections as court proceedings since the reports may play significant roles in sentencing and other decisions made by judges.

There are two slightly different dimensions of scope, the first of which is quite limited and the second of which is quite broad, that I should also like to raise. The first is the question of the admissibility into evidence of statements taken from linguistic minorities by law enforcement officers. If the Miranda warnings are not understood because of the language barrier, or if the statement of an arrested linguistic minority is taken without the assistance of a qualified interpreter, the Task Force believed such statements should not be admissible in court and recommended such in its proposed statute.[9]

The second dimension of scope is the Act's inclusion only of cases in which the United States is the charging party. Consider the proposal of our Task Force, which if paralleled at the Federal level, would extend the provisions of this act to any proceeding in a Federal court or any Federal administrative hearing. I will not express here the arguments which support extending the Act's scope to include these proceedings since they have been develcped eloquently elsewhere.[10] However, concerns for due process, fundamental fairness and equal protection of the laws led our Task Force to recommend extending the right already enjoyed in New Jersey by hearing impaired persons[11] to all linguistic minorities.

There is one final substantive issue I wish to raise but which seems to have received very little attention. The guidelines under Sec. 5 Subsection 1827(d)(1) which circumscribe the types of persons for whom certified or otherwise qualified interpreters are to be appointed may not be adequate. I do not know the degree to which these guidelines have been helpful in assuring that persons who genuinely need interpreting assistance are receiving them in the Federal courts. Our Task Force found, however, that many people in New Jersey were being denied interpreters when interpreters should have been provided or permitted. This was found to be a problem primarily in borderline cases when parties speak some English, not in instances where a party was altogether and obviously non-English-speaking or spoke fluent English. While this may be an issue more appropriately resolved by the Federal courts themselves rather than by legislation, the recomemndation our Task Force[12] made along these lines, should be noted, namely, that any petition for a court interpreter should be routinely granted. In those instances where the authenticity of the need represented in the petition is questioned, a person designated by the Administrative Office of the Courts would administer a reliable and valid linguistic instrument developed by the Administrative Office of the Courts to assess English language competency. The presiding judicial officer would not be permitted to deny the request for an interpreter of a person found by this examination to communicate inadequately in the English language.

The remaining features of the bill are, in my opinion, matters of style or implementation. These include efforts to certify court interpreters for specifically designated languages, to define "otherwise competent interpreter" (or "otherwise qualified interpreter"), to ensure adequate appropriations to the Administrative Office of the United States Courts, to legislatively set a minimum rate of pay for court interpreters, and to establish a Task Force which would perform a variety of advisory functions. I am not in a position to know whether there is a need for such provisions or whether, if there be such needs, these approaches are the most appropriate means for addressing them.

Thank you very much for this opportunity to testify. I hope and trust you will find these comments helpful as you move forward to assure linguistic minorities equal access to judicial proceedings.

## FOOTNOTES

[1] Approximately 8% of all court proceedings in New Jersey require the assistance of a court interpreter. The languages appearing most frequently were, in descending order, Spanish, Italian, Ameslan (American Sign Language), Polish, Greek, Portuguese and Russian.

[2] The final report, entitled EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES, is available to the public as are the twenty background reports upon which the final report is largely based. Copies are available by contacting me at CN-037, Trenton, NJ 08625 or 609-984-5024.

[3] EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES 80 (1985).

[4] Note that no Spanish-English interpreter who was a friend or relative was found to be minimally competent. The Task Force inferred from this the likelihood that the same would be true for other language groups.

[5] Examples include application for the public defender, plea agreement, standard conditions of probation, application for pretrial intervention or other diversionary programs, and the statement of rights in the Municipal Courts.

6 Some of the reservations listed below have appeared elsewhere and should be acknowledged with appreciation. See especially Alicia Pousada, "Interpreting for Language Minorities in the Courts," in LANGUAGE AND PUBLIC LIFE 186 (Georgetown University Round Table on Languages and Linguistics, J.E. Alatis and G.R. Tucker eds. 1979).

7 See the Task Force's proposed standard 1.2.19 at page 18 of the Appendix.

8 Statement of Senator Orrin G. Hatch (R-Utah) on the Senate Floor regarding a Proposed Amendment to the Court Interpreters Act of 1978 4.

9 See page 52 of the Appendix to the final report. This policy is already the law in New Jersey with respect to hearing impaired persons. "(1) When a hearing impaired person is arrested for an alleged violation of a criminal law, a qualified interpreter shall be appointed prior to reading of Miranda warnings interrogating or taking a statement from the hearing impaired person. (2) Any statement, written or oral, made by a hearing impaired person in reply to a question from a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding shall not be used against that hearing impaired person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily and intelligently or, the hearing impaired person has requested a waiver pursuant to section 10 of this act and the court makes a finding that any statement made by the hearing impaired person was made knowingly, voluntarily and intelligently." N.J.S.A. 34:1-69.10(c).

10 D. S. Groisser, "A Right to Translation Assistance in Administrative Proceedings," 16 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 469 (1981).

11 N.J.S.A. 34:1-69.10 reads in part, "The appointing authority shall appoint a qualified interpreter to assist a hearing impaired person throughout the proceedings and in preparation with counsel as follows: ... b. At all stages in any proceeding of a judicial or quasi-judicial nature before any State agency or county or municipal governing body or agency in which a hearing impaired person is a principal party in interest, either as a complainant, defendant, witness or supplicant, or as hearing impaired parents of a juvenile."

12 See proposed Standard 1.2.4 on page 8 of the Appendix to the final report.

## RESPONSES OF ROBERT JOE LEE TO WRITTEN QUESTIONS FROM SENATOR HATCH

1. Do you agree that the Court Interpreters Act should apply to grand jury proceedings?

   Yes, but the Act should also be applied to proceedings before all Federal courts and administrative bodies.

2. What would you describe as the most serious weakness of the current practice in the New Jersey state courts on providing in-court interpretation services?

   This is a very difficult question to answer. I find myself attempting to distinguish between chickens and eggs. The major contenders for the honor of being designated "the most serious weakness" are (1) lack of mandated standards that determine qualifications of court interpreters, i.e., certification; (2) paucity of funding to attract and maintain competent full-time and free-lance court interpeters; (3) dearth of training opportunities for developing skills of court interpreters; (4) lack of uniform guidelines and presence of conflicting local traditions for judges, attorneys and court interpreters regarding the conduct of proceedings that are interpreted (regarding, e.g., responsibilities for payment, roles of court interpreters, modes of interpreting to be used, managing allegations of interpreter error, etc.); and (5). absence of authoritative (i.e., by statute or rule of court) ethical canons to guide the profession of court interpreting.

   Given those available options, I must pick the fourth. The absence of guidelines permits anyone to interpret and a wide range of ill informed practices to occur. If the courts knew what was required to assure linguistic minorities of equal access, if uniform standards guided the courts, then the related qualifications, funding, training and ethical canons would be forthcoming sooner or later. The tone would be set, the goal identified, and, over time, the present pattern of leaving up to individual judges and court administrators all of the decisions pertaining to qualifications, funding, training and ethics would be abandoned in favor of standards that are guided by state-of-the-art theory and practice of court interpreting, are uniform and statewide in application, and are comprehensive in scope.

   Let me illustrate this conclusion by citing a few examples that have been reported to me in recent months. First, a court interpreter was interpreting simultaneously at counsel table for a defendant during a criminal trial. A court attendant told her to shut up since she was distracting the jury. Second, a judge indicated emphatically that he knew he had a highly qualified, proficient interpreter available to serve in his court when needed. When asked how he knew, he reported that the interpreter mimicked the witness. The real test came, he indicated, when the interpreter picked her nose after observing a witness pick his nose. Third, a staff interpreter in a Municipal Court asked the judge to require a person who was sitting in the audience to come before the judge and apologize for remarks the interpreter overheard the person make. The remarks were of a personal nature offensive to the interpreter, but were irrelevant to the case being heard.

   For more examples, see especially pp. 49-63 and 107-119 of Background Report #22, a copy of which I left with your staff on the date of the hearing.

3. On page 50 of the Task Force report, you emphasize that it is "critical that evidence supplied by witnesses before a grand jury be taken though qualified court interpreters" and that "it is clearly not in the interests of due process or reliable fact finding that persons are indicted, let alone convicted, on the basis of statements they have not made." Would you

elaborate on the use of certified interpreters in pre-trial proceedings such as the grand jury?

I do not have much to add to what was stated in the report. Given the confidential nature of grand jury proceedings, the Task Force did not observe and, consequently, did not evaluate the quality of interpretation provided of hearings before grand juries. The paragraph from which you cite was based on the specific example of Takeru Kamiyama (see note 63 on page 50) and the Task Force's sense of what the standards of due process and reliable fact-finding require.

## RESPONSE OF ROBERT JOE LEE TO A WRITTEN QUESTIONS FROM SENATOR THURMOND

1. I am concerned that the high fees proposed in this legislation to be paid to interpreters in federal court proceedings would act as a drain on the state court systems, where court interpreter fees are significantly lower. What would you suggest as a means of insuring that the state court systems are not adversely affected?

The question of impact on the state courts is very real since our Task Force found that the average salary of full-time, staff interpreters in the state was half the starting rate paid to their counterparts in the Federal courts. Furthermore, one of our counties tries to find interpreters who will work on a per diem basis at the rate of $45 per day. The stark difference that already exists between the respective rates of pay would only increase.

I have discussed the issue with persons from the two New Jersey counties that have the largest number of full-time, staff interpreters. The general sense is that there would be no drain on New Jersey's courts. There are two reasons for this. First, not one of our staff interpreters has passed the Federal certification exam. Of course the increase in salaries might provide additional motivation to study and try to pass the exam. But this has not proven to be a problem in the past and may or may not become a problem in the future. It would not be a drain secondly because there are too few full-time positions in the Federal courts to fear losing our staff to such positions.

The real strain on the state courts, I think, is likely appear first in the area of morale and, by implication, performance. Many court interpreters, free-lance as well as full-time, believe they already function at the same level as certified court interpreters who serve in the Federal courts. They feel that since they are doing roughly the same work, they should be paid roughly the same. To the degree the disparity in rates permits dissatisfaction, there may be a decline in performance.

The only other strain I can identify as likely is an economic one. As you can see from our Task Force's report, the existing salaries and rates already in place in the United States courts served to inform the Task Force's recommendations regarding salaries and rates. I believe this has a positive effect on the state, county and municipal court systems. It helps emphasize the professional nature of court interpreting and the compensation that qualified court interpreters should receive.

I am concerned that if the rates go up to the current rates at the Department of State, that the positive effect of the example will be lost. Instead of being viewed as a worthwhile goal, the new rate would be viewed as unrealistically high. I fear the debate would begin to center on irrelevancies rather than skills, politics rather than justice.

In view of these remarks, I suggest that the best way to avoid an adverse effect on state, county and municipal court systems is to develop fee schedules and salary rates on the basis of a rational evaluation of job requirements rather than on the basis of a comparison to pay rates of another group. The approach taken in the Act as currently drafted assumes the State Department's rates are appropriate for emulation in court interpreting. Is there any evidence that such is the case? Assuming that the relevance can be established, what is the evidence that the rates fixed for State Department interpreters are appropriate to the job performed there? It may be that those rates are already inflated, just as it may be that they are too low. Once both of these dimensions are studied with appropriate documentation, the rates can command considerable respect on the basis of the means by which they were justified. And that can have only a positive effect in the long run. subjective basis as inordinantly high. The basic question, then, is can the fees be justified? If they can't, then the proposed rates serve as a bad example. If they can, then they provide a good example.

Senator DeConcini. Thank you very much.

I have not had a chance to review your statements, even Dr. Gonzalez: My staff has copies. I will look at them. I appreciate what you are bringing to our attention. I do have some specific questions, Dr. Gonzalez, which I will give to you right now and you can answer them in due course. I would like to have them on the record, dealing with Native American interpretation and a few other things that I have some particular interest in.

Let me say that the record will stay open for 30 days for anyone who wants to submit additional information to this panel. I am sorry that we cannot take everyone's statement today, but time is precious here. I have got a meeting to go to now on the tax legislation and I am already late. I promised the Leader I would be there.

So the subcommittee will stand in recess, subject to the call of the chairman, and thank you very much.

[Whereupon, at 11:33 a.m., the subcommittee was adjourned.]

# APPENDIX

## ADDITIONAL STATEMENTS AND VIEWS

### TESTIMONY SUBMITTED BY DR. MARILYN FRANKENTHALER

Thank you for the opportunity to present testimony regarding the Senate Bill for the "Court Interpreters Improvement Act of 1985". Please permit me to begin by stating my qualifications.

1. I am a Full Professor of Spanish and the Director of the Center for Legal Studies at Montclair State College in New Jersey. I am a member of the graduate faculty in Spanish and teach courses in both Spanish and law. I have also developed and taught courses which combine these two areas of expertise such as "Skills for Bilingual Legal Personnel" and "Hispanic Community Program Internship in Law".

2. I hold a Ph.D. in Spanish from Rutgers University. and a J.D. Cum Laude from Seton Hall University School of Law. I am an attorney licensed to practice law in the State of New Jersey. The major portion of my practice involves Spanish-speaking clients. A copy of my curriculum vitae is appended to this statement.

5. I am the author of over twenty-five studies, seven of which deal directly with interpreter issues. These include "How to Work with Court Interpreters", "A Call to Legislative Action: The Case for a New Jersey Court Interpreters Act", "Spanish Translation in the Courtroom", "Working with an Interpreter: A Guide for Professionals", and "Las características del lenguaje jurídico en el ámbito legal".

6. I have presented papers or chaired sessions at numerous national and state forums dealing with translator, interpreter, bilingual paralegal, and related language issues. I have served as consultant to such groups as the New Jersey Supreme Court District V Ethics Committee, the New York Board of Regents.

7. From 1981 to 1985, I served as a member of the New Jersey Supreme Court Task Force on Interpreter and Translation Services. This Task Force has developed a national reputation as a model in the area of problem recognition and policy development, setting an example for equal access to court services. I served as a member of the Legal Subcommittee and the Certification, Qualifications and Training Subcommittee of the Task Force. I have actively participated in the drafting of the Task Force's recommendations on Ethics for Interpreters. I have assisted in the design and pilot testing of the measuring instrument used by consultants to the Task Force in the evaluation of current interpreter services in the courts of New Jersey. I am the principal author of the Task Force Background Report on Interpreting and Translating as Professions. I also served as chairperson of the Committee to

Revise and Redraft the Final Task Force Report and was responsible for writing substantial sections of the final document.

8. I am the Director of the 1986 Intensive Summer Program for Court Interpretation, to be held at Montclair State College for three weeks during July of 1986. This Program represents the first such intensive program developed for Spanish language interpreters in the Eastern United States, as well as the such first intensive program to train sign language interpreters together with spoken language interpreters.

The purpose of my testimony is twofold: to voice my opinion regarding several sections of the bill and to bring to the Committee's attention New Jersey's nationally innovative approach to court interpreter education.

## I. OBSERVATIONS REGARDING THE PROPOSED LEGISLATION

I am very strongly in favor of this bill because it represents a global approach to the delivery of adequate interpreter services by highly trained and qualified court interpreters. The bill recognizes that training, education, and evaluation are as much a part of court interpreter quality as the administration of the certification examination. I would, however, like to point out several areas which I consider to be significant weaknesses in the proposed legislation:

1. The implementation of the entire act rests upon one person, who is named in the bill as the "Supervisor of Interpreters for the Southern District of New York". What I am about to say should not be taken as any reflection upon the credentials or expertise of the person who currently holds that position. However, the proposed act places too heavy a burden upon a single individual. This person is not only named as head of the Task Force which will make all of the recommendations, but is charged with the nomination of all Task Force members.

We are not speaking here of a private bill. Court interpretation is an area of national concern, and to place the entire project upon the shoulders of a single individual represents, in my view, unsound planning. The approach seen in this bill can be likened to a building which is constructed in the shape of an inverted pyramid. No matter how strong the one stone on the bottom, the structure will, at best, be shaky. To carry the analogy to it end, what if the current supervising interpreter for the Southern District of New York decides to leave her position? Our Constitution provides for contingencies even at the highest levels of national leadership. In my view, a similarly flexible approach should be taken here.

This view this bill as having the potential for greatly improving the 1978 Act. The new bill is meant to establish a collegiate mechanism that will provide the Director with input from a broad spectrum of the interpreting profession. Every effort should be made to ensure that this mechanism is as functional as possible. If this is done, then the new bill will serve to establish a dynamic dialogue among the parties charged with implementation. In the case of the 1978 Act, which was far more limited in scope, implementation rested with a single individual. While the proposed bill further broadens the areas of responsibility, it effectively shifts policy-making power to still another single individual.

2. I am also concerned with the section of the bill which would raise the pay rates for interpreters to the equivalent of State Department conference interpreters. I was in favor of the current rates of pay, which were instituted as a result of the Federal Court Interpreters Act of 1978, because those rates of pay helped court interpreters to receive their long overdue professional recognition.

While the new and higher rates of pay envisioned in the proposed legislation may seem to represent a laudable appreciation of the qualifications of federal court interpreters, they cannot help but have an adverse effect upon the state courts. As it is, most states cannot even hope to pay interpreters at the current federal rate. If that rate is raised, then the disparity will even more harshly prevent the states from attracting badly needed interpreters to state courts.

In the case of State Department conference interpreters, there are few if any comparable services provided by the states. In contrast, in the courts, the vast majority of interpretive services are required in state courts. Such high rates of pay as are prescribed in the current bill will make it well nigh impossible for the state court systems to attract competent interpreters without creating fiscal chaos.

## II. EDUCATION OF THE PROFESSIONAL INTERPRETER

While the Federal Bilingual Court Interpreters Act has begun to raise consciousness among educators regarding the required level of expertise in the court interpreting profession, no comprehensive training ppolicy has merged. The 1978 Act in no way addressed training policy. Consequently, the implementation of the Act has not addressed this issue. The federal government has not developed structured and long-term programs ofstudy and training. Short term seminars, workshops, and summer programs are nothing more than an indication of the great need and demand, but they do not fill the gap.

By specifically addressing the training issue, the new bill paves the way for the development of a sound training policy to address this key need. The development of such training programs will supply a cadre of well-qualified interpreters to meet the needs of both federal and state courts. Hopefully, the legislation currently pending will enable the federal government to facilitate the development of comprehensive educational programs, so that each state or county does not have to re-invent the proverbial wheel.

I would like to call the attention of the Committee to a nationally innovative model for the education of court interpreters, currently in the planning stages in New Jersey. As a result of our Supreme Court

Task Force, we came to the same realization as is voiced in the current legislation, i.e., in order to develop a pool of qualified interpreters, comprehensive programs of education and training are required. Yet, there exists no comprehensive curricular model for the development of full-scale long-term multidisciplinary programs of study for the education court interpreters. Full and adequate educational programs specifically developed for the training of court interpreters have yet to be developed.

Currently in the final stages of development is a proposal for a partnership among the Department of Higher Education, the Administrative Office of the Courts, and Montclair State College which will, once finalized, make possible the development of a prototype non-language-specific curriculum for comprehensive court interpreter education. It is planned that Etilvia Arjona, primary test development consultant for the Federal Court Interpreter Certification Examination, will serve as primary consultant for the forthcoming New Jersy project.

Several significant events have placed New Jersey in a pivotal position for national leadership in this area. First of all, based upon the recommendations of the New Jersey Supreme Court Task Force on Interpreting and Translation Services, a new section has been created in the New Jersey Administrative Office of the Courts: the Office of Bilingual, Interpreting and Translation Services. The judiciary has seen the need for court interpreter education as the sine qua non of the provision of adequate interpreter services for the non-English-speaking populations of our state, and has joined with the Department of Higher Education and Montclair State College in the development of this project.

This project will tap the resources of some of the nation's top researchers and academicians on court interpretation, together with professional interpreters who have, for many years, been involved in interpreter training. educators. In order to make possible the implementation of comprehensive preparatory programs of court interpreter education, a four-staged project is necessary. This involves: assessments of institutional strengths to determine which institutions will be selected to adopt programs for court interpreter education; development of a core curriculum; offering an educators' pedagogical institute, in order to train the administrators and interpreters who will offer these programs of interpreter education at institutions of higher education; and, finally, implementation at institutions of higher education. A copy of the final Summary of the Project Proposal is appended to this statement.

This project is not intended to represent the be all and end all. Reductions in budgeted resources have caused concomitant limitations in the original scope of the grant. The model curricular guidelines developed will focus upon court interpretation and the materials developed will be restricted to samples of targeted exercises. Special attention will be given to Spanish, on the basis of frequency of usage and urgency of need. The amount of follow-up consultation with target institutions will, similarly, be subject to the time and monetary restrictions of the grant. If we are able to obtain additional resources, then it will become possible to further develop other significant aspects of the project.

It is important for the Committee to be cognizant of this New Jersey project because it addresses a need not heretofore addressed. Through an enormous investment of time, planning and resources which are going into the development of this one area, we are breaking new and vitally important ground in a project which is so necessary to the ultimate provision of an adequate pool of qualified interpreters to serve the atate and federal courts of our nation.

I would like to thank the Committee for giving me the opportunity to present the views expressed in this testimony.

## COURT INTERPRETATION PROJECT
## FINAL PROPOSAL SUMMARY
### New Jersey Department of Higher Education

The original grant proposal by Montclair State College focused upon a broad-based model for the development of a curriculum design applicable to both court interpretation and legal translation. Subsequent reductions in budgeted resources (a reduction from the original proposal of $250,000 to the current dollar figure of $100,000) and the constraints of time (from 3 years in the original proposal to the current limit of 18 months) have caused concomitant limitations in the original scope of the grant.

The scope of the original proposal will be limited in the following salient ways: The model curriculum developed will be limited to court interpretation and the materials developed will be restricted to sample materials in Spanish. Spanish will be the pilot language for the development of materials on the basis of frequency of usage and urgency of need. The amount of follow-up consultation with target institutions will, similarly, be subject to the time and monetary restrictions of the grant.

The following summary describes the parameters of the non-language-specific model curriculum for court interpretation. Four phases in the proposal are envisioned.

1. Institutional Study and Needs Assessments

(a) The initial phase of the project will involve a detailed institutional study to identify and select target institutions of higher education in New Jersey who are capable and willing to assume a leadership role in court interpreter education for the State. The development of an investigative blueprint will be relied upon for this selection process and for future planning.

(b) A statewide assessment will provide data regarding the specific needs of the Judiciary, the Office of Administrative Law and other agencies in New Jersey which frequently require the services of legal interpreters.

(c) A questionnaire, planned to be national in scope, will analyze the perceived needs of current interpreter trainers. This will be vital to subsequent program design, as we focus upon the specific domain of legal interpretation.

### 2. Non-Language-Specific Model Curriculum Guidelines for Court Interpreter Education

These required curriculum guidelines form the basis from which the remainder of the project will flow. Since these guidelines will be non-language specific, or generic, they will be applicable to subsequent specific application to a multitude of possible languages.

### 3. Educators' Pedagogical Institute

The formulation of this Institute is the most complex aspect of the project. The development of this Institute involves both administrative and pedagogical training. Those trained will be the Program administrators at targeted institutions of higher education and the skilled interpreters who will serve as program faculty. The Institute will be offered free to selected educators from the targeted New Jersey institutions. Tuition will be charged to other participants. Criteria for selection will include institutional need and institutional commitment to program development. A three or four-week program for the Summer of 1987 is envisioned.

### 4. Sample Materials Development in Spanish

Participants in the Educational Trainers Institute will learn to develop materials specifically for court interpretation training, based upon the model curriculum. After the Institute, the consultant/faculty trainers will develop a sample package of materials to be made available to participating institutions.

### Personnel

The proposal assumes the presence, throughout the project, of a half-time professional staff member whose salary is funded as a contribution the New Jersey Administrative Office of the Courts. This staff member will serve as liaison to state agencies and institutions of higher education.

The key to the success of this proposal rests with the few nationally recognized experts in the field who will serve as consultants during the four phases of the project. Each phase will involve several meetings of the consultants.

It is expected that Etilvia Arjona, former Chairperson of the Department of Translation and Interpretation at the Monterey Institute for International Studies will serve as primary curriculum consultant to this project. As Primary Design Consultant for the Federal Court Interpreters Certification Project and the Federal Rater Training Program, Professor Arjona has unparalleled experience in the multidisciplinary team approach to sound design and development. Attached is a copy of Professor Arjona's article published with the title "The Court Interpreters Certification Test Design" in Spanish Language Use in Public Life in the United States, edited by Lucia Elias Olivares, et als. New York: Mouton Publishers, 1984, pp. 181-200. The approach employed by Professor Arjona in that instance is analogous in that it is similarly multi-staged and multidisciplinary.

At each phase, it is estimated that two to four consultants, of the highest caliber in their fields, will work with Professor Arjona. Additional staff will include a part-time general administrative coordinator and some clerical assistance. The Project Director will be Dr. Marilyn Frankenthaler of Montclair State College.

Both the Department of Higher Education and the Administrative Office of the Courts will receive periodic updates from the Project Director as the project progresses. At the beginning of each phase of the project, the Administrative Office of the Courts and the Department of Higher Education will have the opportunity to provide input, comments, and suggestions.

## REVISED BUDGET
Court Interpretation Proposal
New Jersey Department of Higher Education

### Overall Project Administration and Coordination

| | |
|---|---|
| Director | $7000 |
| Administrative Liaisons | 4000 |
| Clerical Support | 3000 |
| Computer network | 4000 |
| Postage and Telephone | 2000 |

Note: There are no full-time positions. Rather, project administration consists of project direction in New Jersey and coordination of consultants at diverse locations throughout the nation.

### Costs Associated with Each Stage of the Project

| | | |
|---|---|---|
| Stage I: | Institutional Study | $ 4000 |
| Stage II: | Curriculum Development | 12000 |
| Stage III: | Development of Institute Program | 19000 |
| Stage IV: | Offering of Summer Institute | 38000 |
| Stage V: | Development of Sample Materials | 4000 |
| Stage VI: | Institutional Follow-Up | 3000 |

Note: Each stage involves research and development by consultants, travel, meetings among the consultants, and materials development.

TOTAL DEPARTMENT OF HIGHER EDUCATION COMMITMENT = $100,000

STATEMENT BY MRS. MARĪA ELENA CARDENAS-CHIGNOLI
BEFORE THE SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION
TUESDAY, FEBRUARY 25, 1986
ON THE SUBJECT OF THE AMENDMENT OF THE COURT INTERPRETERS ACT

BACKGROUND AND EXPERIENCE:

- Certified Federal Court Interpreter in Spanish/English
- COURT INTERPRETER since 1970
- A.B. Vassar College
- Professor of Translation & Interpretation
  MIAMI-DADE COMMUNITY COLLEGE (Currently)
  FLORIDA INTERNATIONAL UNIVERSITY (1982-1985)
  MONTCLAIR STATE COLLEGE (SUMMER 1986)
- COURT INTERPRETERS & TRANSLATORS ASSOCIATION
  (Founder & Former President)
- AMERICAN TRANSLATORS ASSOCIATION
  (Board of Directors 1979-1985)
- UNITED STATES DEPARTMENT OF STATE INTERPRETER (FORMERLY)
- ACCREDITED TRANSLATORS & CERTIFIED INTERPRETERS, INC.
  (Founder and President)

SCOPE OF TESTIMONY:
RECOMMENDATIONS TO BE MADE THROUGH THE NATIONAL TASK FORCE

- Simultaneous Interpretation skills
- Certification of languages other than Spanish
- Need for individual certification
- Continuing Education in Translation & Interpretation
- Certification of Translators providing written translations before the courts.
- ADDITION TO MIRANDA RIGHTS:

"IF YOU DO NOT SPEAK OR UNDERSTAND THE ENGLISH LANGUAGE, YOU ARE ENTITLED TO AN INTERPRETER (CERTIFIED INTERPRETER WHEN AVAILABLE) AT ALL TIMES DURING YOUR JUDICIAL PROCEEDINGS."

THE NATIONAL TASK FORCE:

Ever since the enactment of Public Law 95-539 on October 28, 1978 there has been a need for the establishment of a liaison between court interpreters and the Administrative Office of the U.S. Courts, thus the proposed NATIONAL TASK FORCE comes to fill that basic requirement, perhaps overlooked in the original law due to lack of experience and the realities of court interpreting which we now, after these eight years of regulated court interpreting have come to be known.

As I see it, the function of the Task Force shall be to oversee, study, recommend and follow-up on court interpreters matters, as an independent and autonomous body, drawing on the expertise called for in the amended law and seeking to use such experts as those who have no personal former commitments nor involvement with the implementation of the Public Law 95-539, except perhaps as certified court interpreters.

It is already obvious that those who have to date been instrumental in the implementation of PL95-539 will seek to strongly block the creation of this liason task force creating a status-quo in the advancement of the profession and closing avenues of access for the court interpreters and their peers in the Administrative Office and the entire judicial community.

This Task Force is envisioned as a ombudsman for court interpreters, a much needed liason, seeking to review not as a court of inquisition but definitely as an open forum with the ultimate goal of enhancement of the profession of court interpreter and translator.

SIMULTANEOUS INTERPRETING SKILLS:

Linguistic ability consists in the knowledge of a language, its vocabulary, syntax, grammar, particular forms, idioms and usages. Interpreting ability on the other hand, consists in the instant conversion of information in one language into an exact duplicate in another. The essence lies in capturing the precise meaning of verbal communication, with all its attendant shades, inflections and nuances while conveying that meaning and communication in a different language. Accurate interpretation, therefore, requires considerably greater intellectual discipline than mere knowledge and use of a second language. This is particularly true in the case of simultaneous interpretation, where the interpreter must receive and process information accurately at the same time.

For many years, courts have functioned under the misconception that a bilingual individual, filling in summaries to litigants at their own speed and capacity was sufficient to provide due process to non-English speaking defendants. However, in order to fully and accurately communicate judicial proceedings to non-English speaking defendants, a highly skilled technique of simultaneous interpreting in tandem shifts is required. Unfortunately as a rule, most individuals are not capable of performing the simultaneous technique.

Simultaneous interpretation requires the ability to receive information, process the concept and convert it into another language within a matter of seconds. You must listen and translate instantly. After you receive the language in English and begins to process it into a foreign language, you must be capable of immediately listening to the next phrase in English.

Thus the mere fact that a person is bilingual has absolutely nothing to do with whether or not he is capable of competent simultaneous interpretation.

It strikes me that you might want to personally experiment the feeling of what happens in your own brain when simultaneous interpreting is going on. The first exercise given a would be simultaneous interpreter is called "SHADOWING". It involves repeating in your native tongue, i.e. English, exactly as you hear in ENGLISH in an audible voice. Try it. Try repeating exactly what I say or what you hear over the newscast on the radio in your car. This will begin to train your brain in the disciplines of simultaneous interpretation, to be able to hear and speak at the same time, yet with interpretation there is the further step of processing the information into another language with precision. It is only after a student masters the art of shadowing, that he is allowed to start interpreting simultaneously at perhaps 100 to 120 words per minute of diverse kinds of texts.

The Sixth Amendment states that "in all prosecutions, the accused...shall be confronted with witnesses against him...and shall have the assistance of counsel in his defense." How can a defendant in a criminal proceeding be afforded these constitutional guarantees if he is unable to understand the language used in the courtroom? The right of confrontation means much more than the mere physical presence of the accused and the witnesses against him. His rights become meaningless if the accused cannot hear or understand the testimony When liberty or economic well-being is at stake, the highest quality of interpretation is required. A question which is not properly heard or understood may elicit an answer that could alter the outcome of the entire proceeding.

A movie was made several years ago based on this very question about a turn-of-the-century case called: THE BALLAD OF GREGORIO CORTES.

As Justice Holmes stated many years ago: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances at the time in which it is used." While English has very few inflections, either a prefix or a suffix mistakenly applied or interpreted may change the meaning of an entire sentence.

Finally, accurate translation is critical in the context of cultural differences which vitally affect any interpretation. Cultural fluency is as essential to interpreters as knowledge of language and idiom. The same language as used in different cultures and countries may have entirely different connotations than that which a literal interpretation would convey. The judicial system, which does not understand these subtleties, cannot be responsive in providing adequate services.

Simultaneous interpretation as rendered by an experienced certified interpreter under the conditions set forth by international associations such as AIIC - International Association of Conference Interpreters or its counterpart in the United States, TAALS, The American Association of Language Specialists, together with the standards of the Court Interpreters Associations should be closely observed so that working conditions likewise may contribute to the accuracy of simultaneous interpretation before the courts. Long gone is the day when a single interpreter, without equipment, sat next to a defendant for the entire length of a trial. In 1970, when I interpreted at my first trial in the Eastern District of New York, earning $30.00 a day, the U.S. Attorney's Office was shocked when I suggested a second interpreter be used in tandem. Until P.L. 95-539 this was the usual practice in most courts. In Miami, you had to own interpreting equipment to be assigned to multi-defendant trials at your expense with no remuneratioin for its use.

Thus simultaneous interpretation with equipment under optimum conditions will produce accuracy, speed and a sense of professionalism worthy of the stature of our courts. It will likewise be conducive to solving such ethical questions as to what to do when a defendant is ill with a contagious disease such as AIDS, HEPATITIS, TB, LEPROSY, etc.; strict adherance to impartiality in interpretation, and the like.

CERTIFICATION OF OTHER LANGUAGES:

Much has been made of the fact that the only language per se that is needed for the certification program is SPANISH, and that duplicating such efforts in other languages would not only be outrageously expensive, but virtually unnecessary. I have but one point to bring out, because I believe figures have been grossly exagerated.

The AMERICAN TRANSLATORS ASSOCIATION, a nationwide organization with just over 2,000 members, with an annual balanced budget of approximately $100,000 has managed of late to accredit by examinations such combinations of languages as ENGLISH into SPANISH, PORTUGUESE, FRENCH, ITALIAN, GERMAN, RUSSIAN and POLISH and vice-versa. They are presently working on Japanese and a very elaborate accreditation program to be known as ATACERT. No one has ever paid anyone at ATA to write examinations and only token amounts are paid to proctors and graders, nevertheless, the program is well instituted and respected by educational institutions, private industry, worldwide organizations and governments.

Certification is the most accurate method at our disposal to assure that the majority of judicial interpreters provide services sufficient to comport with the guarantees of the Constitution. Withou such certification, there is no accurate means to determine the quality of an interpreter´s performance.

AVAILABILITY OF CERTIFICATION - FREQUENCY OF EXAMINATIONS:

The subject of frequency of examinations has rested solely upon decisions made by the A.O. I feel examinations should be made available to interpreters much in the same way as they are available to those interpreters who wish to enter into the rolls of the United States Department of State. If an interpreter wishes to be tested, he has the possibility open to him to come to Washington, at his own expense and to submit to the rigors of the State Department set of examinations which once passed will avail him of assignments, much in same way as court assignments.

The argument has been secrecy of the materials upon which the exams are based, yet that appears as a fallacy, when it is a well known fact that the same persons who wrote and administered the examination for the A.O. gave courses on court interpreting during concurrent contractual periods.

Much hardship has been and is being suffered by potentially fine interpreters due to the fact that the A.O. Certification examination is only given administered periodically and for only one language.

This is a salient point that should be dealt with forthwith by the Task Force.

While I believe the only valid way to certify an interpreter is through rigorous examinations both written and oral, subjects contained and tested therein should be really meaningful and illustrative of what an interpreter's work is likely to be in the course of rendering his services before the courts.

Whereas experience criteria are helpful and should be developed, there is no alternative to an examination in order to determine an individual's present ability, both in terms of substantive linguistic skills and interpreting techniques.

CONTINUING EDUCATION FOR JUDICIAL INTERPRETERS & TRANSLATORS:

Under the proposed amendments to the Act, the Task Force is directed to make proposals relating to training as to ensure the continuing availability of qualified interpreters. I believe, as a Professor of Judicial Interpretation and Translation, that it will be beneficial and necessary to implement a training program in conjunction with other requirements of the Act.

There has been no specific program established publicly for training of interpreters, except sporadic seminars for those already a part of the profession by the Federal Judicial Center. There has been no program for interpreters of Spanish or other languages in order to polish the skills needed to adequately interpret at a judicial proceeding when specialized training is essential. Even simultaneous interpreters who are experienced in conference interpreting, such as before the United Nations or the European Common Market, are frequently unprepared for the exigencies of interpretation before the courts. Incidently, many conference interpreters are seeking to join the ranks of court interpreters, as they find the field to bring them steadier assignments at a better rate of pay than years ago, when they would look down upon us with a holier than Thou attitude.

Interpreters require training materials, glossaries, first-hand observation and consultations with colleagues to prepare themselves for the task of court interpreting. The only courses presently available are privately sponsored and in the Spanish language. Even more distressing, there is no way a non-Spanish speaking interpreter can study anmd prepare himself for judicial interpreting.

Again this becomes an important point for the Task Force to look into.

CERTIFICATION OF TRANSLATORS PROVIDING WRITTEN TRANSLATIONS BEFORE THE COURTS:

The TASK FORCE should seriously look into the certification of judicial trnaslators, because inasmuch as there are persons with excellent language skills and knowledge of our judicial systems and those of other countries, there is no way of telling if he/she is an accurate and faithful trnaslator.

Standards should be set for the presentation of translated documents as well as transcription/translations emanating from electronically registered sources of evidence such as audio and video taped materials.

A category of CERTIFIED COURT TRANSLATOR should likewise be established, with the aid of the standards set by the TASK FORCE. Several European and Latin American already make this distinction between the CERTIFIED COURT INTERPRETER and his counterpart who renders written materials: the CERTIFIED COURT TRANSLATOR.

In closing I wish to share with you a thought that has been in my mind for several years now and which I believe would not only truly give the COURT INTERPRETER a very definitely integrated and respected position as expert OFFICERS OF THE COURTS and that is that whenever MIRANDA RIGHTS are administered these include the following phrase:

> " If you do not speak or understand the English language, you are entitled to an Interpreter (Certified Interpreter when available) at all times during your judicial proceedings."

I thank you for the honor of allowing me to present these thoughts to you, hoping to make you aware of some the problems confronting our profession, and for which we are now seeking relief with the wise findings of this SubCommittee on the Constitution.

COURT
INTERPRETERS &
TRANSLATORS
ASSOCIATION, INC

TO: The U. S. Senate Subcommittee on the Constitution

The Court Interpreters and Translators Association hails the Court Interpreters Improvement Act of 1985 as the most comprehensive and clear-headed legislation to date on the use and training of judicial interpreters.

We support and applaud both the bill's intent and its specific provisions which, taken together, are designed to guarantee that the highest quality interpreting services will be made available to non-English speaking persons and the hearing impaired.

By armending the Court Interpreters Act of 1978, the intent of the Act of 1985 is to provide for reliable testing procedures in languages other than Spanish, to ensure the effective administration of certified and otherwise qualified interpreters in U. S. Courts and to require administrative accountability in the form of annual reports to Congress on the methods adopted to identify, train and monitor certified and qualified court interpreters.

The previous legislation of 1978, while noteworthy, suffered from several defects of omission and was not effectively enforced, possibly because insufficient attention was paid to the original legislative mandate. It is CITA's view that the passage of the 1985 bill would swiftly and efficiently set up an interpreters task force to address the very issues which have not been dealt with over the past seven years.

The previous act, 18 USC 1827, did not explicitly state that simultaneous interpretation, including the use of electronic equipment in multi-defendant proceedings, was the principal mode of interpreting to be used in court as the best guarantor of due process and defendants' fifth and sixth amendment rights; it merely mentioned special simultaneous equipment under section 1828. The previous legislation erroneously suggested that consecutive interpretation was the main style of interpreting used in court, when in fact the consecutive mode is limited to witness testimony only, for example when a non-English speaking or hearing impaired person is testifying under oath through an interpreter. The new legislation recognizes that interpreting for witnesses (at Grand Jury proceedings, hearings or trials) is only one of many functions the court interpreter may perform. The previous law also permitted, under certain conditions, the use of summary interpretation, which, it has now been generally established by case law, is a woefully deficient method of keeping a defendant apprised of the testimony and evidence against him. In general, the Court Interpreters Improvement Act of 1985 mends the omissions of the 1978 Act and clarifies the original legislative intent by spelling out the steps that must be taken in the broadest application of the law, including the necessity of having certified or otherwise qualified interpreters in Grand Jury and other pre-trial proceedings brought by the Department of Justice. The 1978 Act did not require the Dept. of Justice to comply with the standards set for certified interpreters. The new Act will see to it that all branches of the criminal justice system nationwide respect the standardized rules as regards qualified interpreters. Naturally, in the presentation of prosecutorial evidence, complete and accurate interpretation is no less important than in later-stage motions and trials before the Court.

Since the passage of the Act in 1978, hundreds of Spanish-English interpreters have been certified, but although the initial legislation foresaw the need for certification in other languages and in fact mandated that such certification be carried out, no steps have been taken in that direction, nor have adequate resources been earmarked for necessary training programs, evaluation and testing of court interpreters in other languages, including American sign language.

CITA represents active staff and freelance interpreters throughout the U. S. and since its founding in 1978 has advocated training and certification of interpreters through competent testing methods. Only in this way will court interpreters as a group maintain professional standards of excellence and integrity. We are therefore particularly pleased that the new law of 1985 would require interpreters of languages other than Spanish to be certified, while at the same time providing for the training and monitoring that the profession has not received to date.

Our members are most interested in achieving wider recognition for the profession, promoting the highest quality services and receiving adequate compensation for their services. The new law of 1985 would further each one of these aims. Court interpreting has not attracted experienced top-flight conference interpreters in great numbers because the fees have remained significantly below the rates accepted as standard by international conference interpreter associations. Even among certified Spanish court interpreters, many cannot dedicate themselves completely to the profession because they must have a more dependable means of support. By providing as a matter of law that freelance fees for professional simultaneous court interpreters should adhere to the rates paid by the U. S. State Department for conference level interpreters, the Act is helping to attract highly talented linguists to the profession and is allowing active freelancers to remain in the field rather than seek supplementary work. As a result, there will be greater interchange among conference and court interpreters and the 1985 Act will allow them to benefit from one another's expertise.

CITA would note that an especially innovative and important component of the proposed law is the formation of a National Court Interpreters Special Task Force. Under section 1829, the members of this task force would be active interpreters with academic, administrative and research experience. These are the most qualified and experienced persons to assess the proper criteria to be used in the identification of competent interpreters. The Task Force, through its recommendations, will assist the Director of the Administrative Office in carrying out the educational programs without which the terminology used by different interpreters in the same language can be widely divergent. There are key legal concepts in American law that do not exist in the legal systems of other countries, and this means that often an interpreter must construct an expression for "burden of proof", "use immunity", "discovery", etc. The confusion will only augment if different interpreters in the same language are using different expressions for these frequently mentioned concepts. Differences in international legal systems make it necessary for interpreters to understand not only isolated terminology but the legal concepts themselves, and this objective can only be met through proper training of interpreters who work in languages as diverse as Chinese, Arabic, Hindi, etc.

Our association believes that a Task Force, created to focus on the interpreting problems encountered in courts nationwide, is the best way to begin to establish consistent practices and consistently high quality interpreting. The passage of the Court Interpreters Improvement Act of 1985 would greatly improve the delivery of interpreting services and the administration of interpreters in the nation as a whole. It would contribute significantly to producing a corps of judicial interpreters in many languages of which the United States could be proud. For all these reasons, CITA endorses without reservation the provisions and underlying objectives of the Court Interpreters Improvement Act of 1985.

Respectfully submitted,

Nancy Festinger

February 17, 1986

Nancy Festinger
President

Encl: Text of speech given at CITA's annual meeting, 1985

## COURT INTERPRETING: MAINTAINING LINGUISTIC FIDELITY IN THE CROSSFIRE OF LEGAL BATTLES

Only recently has court interpreting been recognized as a profession rather than a function any bilingual person can be expected to perform. Many equate bilingualism with interpreting and unfortunately, when outside the courtroom, many attorneys continue to use relatives or other inmates to convey important legal matters to their clients.

Most of the court interpreter's work today is done in the simultaneous mode, that is, the interpreter listens to the proceeding and at the same time gives a simultaneous rendition of it in another language. In fact, the very first time formal simultaneous interpreting was used was in a courtroom, at the Nuremberg and Japan War Crimes trials. That was the birth of our profession, and although on an international level it was recognized that criminal defendants were entitled to hear a simultaneous interpretation of the proceedings in their native language, the United States lagged behind for some thirty years until it adopted such simultaneous practices in its courtrooms.

Ours is still a young profession. Those who have worked consistently in the field for ten or twenty years are respected ground-breakers (I won't call them elders). They charted new territory, helped establish legislation, such as the Court Interpreters Act of 1978, developed testing procedures, and made the way for others. Without their efforts to gain recognition for the field of court interpreting as a highly specialized profession, none of us would be court interpreters today.

Court interpreting is a unique kind of interpreting, adapted to the legal setting, but all interpreters, and court interpreters are no exception, must be generalists as well as specialists, acquiring over time the broadest possible knowledge of two or more languages, including levels of speech, regionalisms, and usage from the pool room to the board room. Interpreters by nature must be inter-disciplinarians, with an insatiable curiosity about words and the subtle variations of meaning in context. Interpreting is a flair for matching style to content at a moment's notice - - matching thoughts which are not of our own making to structurally and tonally precise equivalents in another language.

Interpreters have one thing in common with attorneys: we love to talk. If we didn't, we could not enjoy what we do, and we had better enjoy our work, or who in his right mind would put up with it? I say 'right mind' for good reason: interpreters live in so many minds that we are in frequent danger of losing our own.

Most people, including the judges and attorneys who use our services, do not realize how demanding and nerve-racking the interpreter's job is. What makes it exhausting is that we have to think everyone else's thoughts. An interpreter with a one-track mind is a contradiction in terms. We perform mental gymnastics, jumping from an attorney's constitutional argument in a motion to suppress, to a drug addict's slurred explanation, to a witness's deliberately elusive answer, to the socio-psychological jargon of a probation report, to the small print of a statute, to a judge's syntactically convoluted charge to the jury - - often, all in the space of a few hours. We repeat patent nonsense, veiled (or not-so-veiled) bullying, impassioned pleas, righteous indignation, stern admonishments, nit-picking questions, ironic remarks, barbed answers, tearful confessions, and through it all we must pay unflagging attention, betray no sign of annoyance or incredulity, all the while maintaining composure, impartiality and linguistic fidelity. Little wonder that when we go home our heads are reeling and we can barely hear ourselves think.

Muddled thinking is an occupational hazard. Others do it, it drives us crazy, but we have to learn to live with it. Our jobs would be made easier by English speakers who spoke English properly. Perhaps Lewis Carroll had court interpreters in mind when he wrote, in "The Hunting of the Snark":

> Commencing every single phrase
> With 'therefore' or 'because'
> I blindly reeled, a hundred ways,
> About the syllogistic maze,
> Unconscious where I was.

In 1973, as a result of an interpreter's strike at the United Nations, a panel of psychiatrists, neurosurgeons and personnel managers was formed to study the stress affecting interpreters. In a recent newsletter of the American Society of Interpreters, veteran conference interpreter Alvaro Galván points out that the panel concluded that "an interpreter about to begin interpreting at a meeting of average difficulty is under stress several times greater than that experienced by a skilled neurosurgeon starting a difficult operation." This may come as a big surprise to others, but interpreters know what causes their peculiar form of angst: the spontaneous words and thoughts which will emerge from a brain at work are seldom predictable. A surgeon may know where the connections are and how it is all supposed to fit together; for an interpreter, alas, the connections other minds make are not always readily apparent. What is more, in court, witnesses and defendants are themselves under stress, their futures are often at stake in an unfamiliar and formalized environment, and their nervousness affects their manner of speaking. Of course, it is not the interpreter's job to calm a person down or murmur reassuringly to a witness or a defendant that everything will be all right (everything is never all right), yet stress is catching, and a nervous speaker is certain to increase the interpreter's anxiety. No doubt we could compile an entire encyclopedia of tics and noisy gestures which distract us from the speaker's words, requiring ever greater patience and vigilance on our part. We must allow nothing to get between us and the words, although sometimes it seems as though everyone is conspiring to derail our train of thought.

It would be an ideal world if witnesses spoke clearly and succintly, giving logical and consistently comprehensible answers. But not everyone is a practiced speaker;

not everyone listens carefully. There are as many speaking styles as there are people, and as many kinds of shop talk as there are human activities. We must be prepared to interpret for people from all walks of life, in rapid succession, adopting their thought patterns in order to be able to reproduce them in another language.

Yes, we make sure that people whose native language is not English will be able to hear the proceeding and be able, if necessary, to hear and answer questions in their native language. They do not always understand what they hear, but they hear it. The rest is not up to the interpreter. Often the person or persons we are addressing find what we are saying unintelligible. We have all had the feeling that words we spoke were falling on deaf ears. We want people to understand one another, but we can never be in control of how they understand one another once the language barrier is removed. Even with the assistance of a qualified interpreter, there may be obstacles in the way of communication: these barriers, however, can be of social, cultural or psychological origin and not, strictly speaking, linguistic in nature. What English speakers take to be the real world may not be the real world in other languages. As Sapir, the eminent sociolinguist, noted in an essay written in 1921;

> "The real world is to a large extent built upon the language habits of the group. No two languages are ever sufficiently similar to be considered as representing the same social reality. The worlds in which different societies live are distinct worlds, not merely the same worlds with different labels attached."

Interpreters become painfully aware that people talk to one another but they do not always understand one another. People do not always say what they mean or mean what they say, and frustrating though it may be, we can do nothing about it. We must expect that an adversary will try to get under, over and around a witness, rather than through to him. Court interpreters must linguistically survive tactical legal battles, without getting caught in the crossfire. There are still some who confuse the message with the messenger and would sooner blame the interpreter than understand words they did not want to hear.

Let me turn now to some of the working conditions which prevent us from carrying out our task with optimal efficiency.

Unlike our colleagues who interpret at the U. N. or at international conferences, court interpreters work under trying conditions (no pun intended), twisting our necks to whisper in someone's ear, straining to hear extremely rapid, often mumbled speech, very rarely with advance warning of the complex legal issues to be discussed. Whereas U. N.-style interpreters always rotate every 30-45 minutes, steady rotation is still limited to a few Federal Courts and is considered sacrilegious on the State Court level. Because of these medieval conditions, many top conference interpreters refuse to work in a courtroom. In spite of our need for rotation, recognized in all branches of the interpreting profession, many State and Federal Court judges object to authorizing payment for two interpreters in a lengthy legal proceeding. With the best of intentions to save the taxpayers' money, they sacrifice complete and accurate interpretation at the expense of the interpreter's mental exhaustion.

Another problem in the field is the precariousness of the freelancers' existence, especially those who work in uncommon languages. There is a streak of recklessness in all freelancers who try to depend on court interpreting for a living. Our earnings are uneven, work expected to last days lasts hours, or vice versa, with no notice; our schedules fluctuate as frequently as the stock market, payment is often delayed by many weeks and months; we have no health plans or benefits and must deduct our own taxes. A professional freelance court interpreter must assume certain financial risks or look elsewhere for work. It is not possible to raise a family on income derived exclusively from court interpreting.

What can the Court Interpreters and Translators Association do about all this? Our profession has been plagued by a lack of unity, a preponderance of self-interest among interpreters who must scrap for a living, and rules which pass from administration to courthouse, frequently changing from one courthouse, or one courtroom, to the next. CITA will begin to take policy positions and make recommendations on working conditions nationwide. We are here to help remedy a chaotic situation by becoming the voice of a unified profession. To that end, we have many plans for the coming years. CITA has been consulted and will continue to play an active role in pending legislation designed to improve the Federal Court Interpreters Act of 1978. Among the recommended improvements are: certification of major languages other than Spanish, and a freelance rate more in keeping with prevailing market rates.

CITA also plans to seek corporate contributions for interpreter-related activities. We hope to hold advanced training workshops, to organize lectures for lawyers to help them work more effectively with interpreters, and to write articles for legal publications about the interpreter's role.

We will continue our monograph series, and will publish next year the first Spanish-English glossary that isolates verbs and verbal phrases commonly used in legal proceedings. It will run over one hundred pages. Finally, we will have somewhere to turn, not only for simple verbs such as "to arrest" and "to arraign" but for complex verbs whose equivalents are harder to find, for example, "to Brutenize" (never to be confused with "brutalize") or "to taint", "to dissemble", "to browbeat" and so on. We hope that eventually an equivalent list can be compiled by CITA members in other key languages.

In closing, let me say that despite the difficulties court interpreters encounter in the performance of their delicate task, it is astounding how many have raised interpreting to an art form. It is an art requiring great self-effacement. But perhaps it is not so surprising to find that many court interpreters are accomplished or aspiring artists in other fields as well. After all, what is art but the posing of purposeful questions in the language of one's own choosing?

COURT
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March 18, 1986

Senator Orrin G. Hatch
Chairman
Subcommittee on the Constitution
United States Senate Committee on the Judiciary
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

We read with keen interest the testimony presented at the hearing on the Court Interpreters Improvement Act of 1985 held on February 25, 1986.

The Court Interpreters and Translators Association is deeply appreciative of the attention you have paid to court interpreting issues. It is clear from the careful drafting of the bill and the concern expressed for these issues at the hearing that your commitment to improving the conditions for foreign-language litigants is firm. As court interpreters, we find the quality of the bill and the Subcommittee's dedication to it most admirable.

Our Association, as the only national organization representing professional court interpreters, felt it would be proper and helpful for us to address some of the assertions made in Judge Gee's statement to the Subcommittee. A copy of our response is enclosed, and we would request that you include this additional statement by CITA as part of CITA's written testimony on S.1853.

If we can be of assitance while the vote on the bill is pending, please contact us.

Yours sincerely,

Nancy Festinger

Nancy Festinger
President, CITA

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March 17, 1986

TO: Honorable Judge Thomas Gibbs Gee
United States Court of Appeals Judge for the Fifth Circuit

Honorable Judge:

The Court Interpreters and Translators Association has read the testimony of the witnesses before the Subcommittee on the Constitution, of the Committee on the Judiciary of the U. S. Senate, with respect to the Court Interpreters Improvement Act of 1985.

Our Association represents active court interpreters in many languages. Our members have provided and continue to provide thousands of hours of service every month to Federal and State courts throughout the country.

Your Honor indicates in his testimony that the Committee on Court Administration will recommend to the Judicial Conference that most provisions of

S. 1853 be rejected. Since this decision will not become final until approved by the full Conference, CITA wishes to reiterate its unqualified support for the proposed bill. In so doing we would like to bring to Your Honor's attention our observations as to certain inaccurate assertions and conclusions, many of which flow from incomplete data provided by the Administrative Office (hereafter referred to as the AO). As the only national Association which represents court interpreting professionals, we feel it is our responsibility to inform the judiciary of the nature of court interpreting services and our experience with the implementation of the original Court Interpreters Act of 1978.

The 1985 bill declares that "qualified interpreters are sometimes not provided to non-English speaking persons." CITA agrees with this statement and believes that inadequate services can and must be remedied by the Court Interpreters Improvement Act of 1985.

## MAJOR IMPROVEMENTS IN NEW BILL

### I. Certification of Languages

Certification in major languages is not only essential for guaranteeing due process but is economically feasible and fulfills the spirit of the original Act. It was never Congress' intention to afford only Spanish-speaking defendants and witnesses the benefits of having certified interpreters.

Your Honor correctly observed that certification must be based on skill demonstration and that paper qualifications are in no way adequate for court interpreters. We agree that the AO has created a uniquely objective credentialing process. There is no legally sound justification for insisting on this "objective credentialing process" in Spanish and not in other languages. As Your Honor pointed out, the acceptance of paper qualifications will never assure the court of qualified and impartial interpreters. Yet in the absence of a qualifying court interpreting examination, paper qualifications are essentially the only method for judging suitability of interpreters in languages other than Spanish.

The chief arguments against certification of other languages are:

a) Small number of cases in other languages;

b) High cost of certification process;

c) Presumed scarcity of interpreters in other languages.

#### a) Small number of cases in other languages

The statistics published by the AO for proceedings involving foreign-language defendants are misleading. It appears by the number of "docketable events" that there is an insignificant amount of interpreting in languages other than Spanish. However, these figures for "docketable events" do not reflect the actual work-hours of interpreting services delivered per defendant and per case.

Our research reveals that at least 20,000 of the "docketable events" listed for Spanish in 1984 represented brief border and transport cases in the Southwest and California. Such cases are generally resolved within 30 minutes. In contrast, we offer the example of a multi-defendant trial of Italian-speaking defendants presently before the Honorable Pierre Leval of the Southern District of N.Y., US v Badalamenti et al. Of the 23 defendants, 17 rely entirely upon the interpreters simultaneous rendition of each day's proceedings. The trial began on September 4, 1985. If we select but one of these 17 non-English speaking defendants and calculate the number of hours of interpreting services he has needed, the following numbers emerge: calculating at 30 hours per week for some 24 weeks, we arrive at a valid description of Italian interpreting services performed. This single defendant has already received 720 hours of interpreting service, and the trial is expected to last another 6 months. If one defendant in this case has received 720 hours of interpreting service, the 17 defendants together have received 12,240 hours to date. When one compares these extremely lengthy, multi-defendant proceedings with the thousands of 30 minute border cases, it becomes clear that statistics for different types of proceedings, of undifferentiated duration, are being lumped together, and the result is an inaccurate picture of the amount of interpreting actually required.

These statistics should not be relied upon, for the reasons cited above, and because there is no consistency in the reporting of "docketable events" from Federal Courts across the U. S. We have no way of knowing how the individual District Courts arrived at their figures for "docketable events" nor do we know what percentage of the nation's courts have reported back to the AO.

b) High cost of certification process

Your Honor estimated, on the basis of AO figures, that it would cost $120,000 to develop each new certification exam. It is CITA's opinion, after consultation and research, that this figure is unnecessarily high, for the following reasons:

The $120,000 figure represents the original expenditure for a model certification program in Spanish. It was specifically created with a view towards adapting it to other languages. An excellent written and oral examination already exists. The English-language portions of the test can be used as is. Minimal translation and re-writing of some language specific portions would be necessary, but would require a relatively small amount of time and money. It would be especially easy to recreate the oral (performance) portion of the existing exam because only the sight translation section and one-half of the consecutive section need be rewritten.

The AO recently paid a contract vendor $250,000 for the 1985 Spanish certification exam. Given the fact that the test model and format, as well as the process for administering the exam, have existed since 1979, we are baffled at the additional one-quarter million dollar expenditure for the fourth Spanish examination, even moreso because no funds have ever been allocated for other languages.

### Cost-Saving Devices

Major cost-saving devices can be used to reduce the cost of certification. In 1985, for the first time, candidates were charged a nominal fee for taking the exam. Such a procedure can and should be utilized in the future. As is the practice for the Registry of Interpreters for the Deaf, the candidate could absorb one-half the cost of administering each examination.

One of the most costly features of the Spanish certification program was the profusion of test sites and the length of the testing period. The test sites and the duration of the testing period would both be greatly reduced due to smaller numbers of candidates for certification in other languages.

As an additional cost-saving strategy, the administration of the examination should be carried out directly by the government, rather than a contract vendor. Citing the Nov. 2, 1979 AO memorandum which you have appended to your testimony: "2. Any contractual arrangement with a university would be more costly; 3. We should have direct control over test standards."

Finally, there are government staff interpreters as well as videotaping and recording facilities which could and should be utilized by the AO, at minimal cost, to help develop and administer certification programs.

If necessary, costs for certification could be even further reduced by not testing all eight languages immediately, but by proceeding with two new languages per year.

c) Presumed scarcity of interpreters in other languages

CITA and other professional interpreter associations have within their ranks interpreters in Romance, Slavic, Semitic and Oriental languages who are ready and anxious to be certified. It is an unfair and unfounded assertion that "There are very very few persons in the U. S. who can interpret . . . at the Federal Court level." There may be few as compared to other professions, but there are sufficient numbers of interpreters in all major languages who would welcome the chance to become certified. In fact, experienced interpreters in languages other than Spanish are injured in that there is an implication that they are somehow less qualified than Spanish interpreters because they are not permitted to become certified. Furthermore, the fact that they are uncertified sometimes gives rise to unfounded linguistic arguments that take up court time and subject the interpreters to allegations of incompetence.

There is no reliable data, based on any kind of recruitment in universities or specialized language-training programs, that can predict with any accuracy the number of potentially qualified interpreters in the U. S.

Reliance on State Dep't. referrals is an inadequate mechanism for obtaining qualified court interpreters. The State Dep't. makes no claim to testing for knowledge of legal language or judicial proceedings. Many conference interpreters need extensive preparation in the legal field, even when experts in other fields, in order to work effectively in court. State Dep't. interpreters may be no better equipped for Federal Court proceedings than court interpreters would be for, say, top-level talks on nuclear arms.

In the long run, it is only by ignoring the certification of other languages that the groundwork will be laid for a plethora of appellate points in future cases.

## II. Criteria for Otherwise Qualified Interpreters

CITA unhesitatingly supports the issuance of regulations establishing criteria for "otherwise qualified" interpreters. We particularly applaud the inclusion of a performance criterion. This provision, rather than being labeled "standards for non-certified interpreters", should be viewed as a salutory interim measure to improve the quality of interpreting services for those who have not yet been tested. Through such regulations, judges and court administrators will be informed of the minimal qualifications which must be met by those interpreters who have not yet been afforded the opportunity by the AO to become certified.

In arguing against this measure, Your Honor states that "Some tasks are better left undone because to do 'something' might be more dangerous than doing nothing." It is our ongoing experience as court interpreters that what is truly dangerous is the continuance of the present system, whereby there is no certification and no criteria for any interpreter except in Spanish.

We are confident that the judiciary would be better served through information rather than lack of information, through some criteria rather than none at all.

## III. Annual Reporting and Interpreter Fees

CITA approves of the inclusion of reporting on qualifications use and performance of interpreters. The original Court Interpreters Act requires reporting on "effectiveness" of interpreters, but no such reporting has ever taken place. It is clear that this new provision, Sect. 1827 (b) 3, is designed to ensure uniform compliance with the Act and accountability by individual District Courts as regards the interpreters they are using and the statistics they are reporting to the AO.

This is an important provision because it will promote the use of certified interpreters. Despite Your Honor's belief that "Most courts have made every possible effort to obtain a certified interpreter", our Association has detailed information about ongoing and widespread use of uncertified interpreters where certified interpreters were available.. For example, according to the chart of AO statistics on docketable events for 1984 appended to your testimony, there were 2,264 violations of the Court Interpreters Act in the Southern District of Texas, because non-certified Spanish interpreters were used. CITA's Southwest Chapter President, a certified Spanish interpreter who resided in the Southern District of Texas, was available, as well as others, throughout 1984, and yet the courts chose uncertified Spanish interpreters. In the metropolitan N. Y.-New Jersey-Conn. area, there are some 30 certified Spanish interpreters. Many of our members are from this area and are consistently available to provide their services; nevertheless, you will observe in the same chart cited above, that more uncertified than certified interpreters were used in the state of New Jersey.

On the matter of fees, CITA views an increase in court interpreter fees as essential in attracting the highest quality interpreters, so that due process can be assured to non-English speaking persons. We support the setting of the State Dep't. conference rate as the standard for those court proceedings which require sustained simultaneous conference-level interpreting. It is because the proposed increase should only be made applicable to extended or multi-defendant proceedings that we are certain that the increase could in no way approximate 50%.

A fair schedule of fees would differentiate between quick pre-trial conferences or border cases and conference-level interpretation of sustained proceedings requiring simultaneous interpreting. We, as a professional court interpreters association, can confirm that sustained simultaneous in court is no different, and is in fact more arduous, than other kinds of simultaneous interpreting, the fees for which are agreed upon by international interpreting associations such as TAALS and AIIC.

There must be coordination of fees among federal governmental agencies. Many governmental agencies (State Dep't., OAS, FBI, DEA, and Customs) are currently paying interpreters and translators much higher fees, often for the same cases as later appear in court, and there is a danger that the courts themselves (where the Constitutional rights of a defendant to knowingly participate in his own trial must be protected) will lose the best interpreters.

CITA has maintained for years that most State Courts are remiss for not recognizing that professional simultaneous and consecutive interpreting is necessary to guarantee due process. Because of their low standards, State Courts have not paid interpreters at a professional rate. The Federal legislation would be both a model and an incentive to State Courts to bring their standards up to the Constitutional norm. To argue against improving Federal standards based on its potential effect in State Courts, is tantamount to suggesting that we mustn't pay Federal judges, prosecutors or administrators decent salaries because no one would then be available to State Courts. The point is not to create uniform mediocrity, but uniform excellence.

### IV. Use of Certified Interpreters in Grand Jury Proceedings

CITA reiterates its support for extending the use of certified interpreters to pre-indictment and pre-trial proceedings, especially before the Grand Jury. We wish to emphasize that extending the requirements of certification to the Grand Jury will not, in and of itself, solve the problem of inaccurate interpreting. There must be certification in languages other than Spanish so that the Grand Juries have a pool of qualified interpreters to call upon. If such certification is not implemented, the same violations of due process that have occurred before the Grand Jury in the past will continue.

### V. Use of Simultaneous Mode

As experienced professional court interpreters, CITA can attest to the fact that the overwhelming majority of proceedings must be interpreted in the simultaneous mode. The landmark Negrón decision of 1970 established that the entire proceedings must be interpreted to a non-English speaking defendant as they occured. This standard has never been reversed and thus the requirement for simultaneous interpreting in court is the law of the land. While there may be some interpreters who cannot perform the simultaneous technique, our response cannot be to allow them to perform substandard work. Rather, we should invite them to learn the skill or translate in other contexts.

CITA wishes to point out that the consecutive technique is only appropriate for question and answer contexts and witness testimony. Simultaneous is the mode of interpretation which must be used to relate proceedings to defendants.

### VI. National Task Force

CITA's members view the establishment of the National Court Interpreter's Special Task Force as being of crucial importance in improving interpreting services in the Federal courts. Its special composition and regional representation would ensure that the actual providers of interpreting services throughout the United States would address crucial issues which have thus far been ignored.

Whereas the AO at one time had consulted with a broad spectrum of interpreters (attached memoranda dated 1979 and 1980), the ultimate decisions on how to implement the Court Interpreters Act were made by administrators. There is a clear disparity between what was contemplated in 1979, with the advice of professional interpreters, and what was ultimately done. In the Oct. 25, 1979 memo, various matters requiring attention were identified, such as

- "develop a code of ethics for interpreters . . . "
- "develop standardized administration of interpreters . . . "
- "develop standardized materials written in foreign languages for use in the Magistrate's courts . . . "

Problem areas were identified early on but, inexplicably, the follow-up work was not carried out. The Task Force as contemplated in the new bill would revive these issues which had been recognized as essential and also touch upon new ones.

These experts, with the assistance of a Federal judge who will represent the judicial viewpoint, will be able to make recommendations that will be both time- and cost-effective. We believe it would be inappropriate for any group or individual who has served as contract vendor to the AO to be a member of the Task Force, so as to avoid actual or potential conflicts of interest. Institutions having a financial relationship with the AO could conceivably remain as consultants.

Among the areas to be examined by the Task Force are:

- more cost-effective methods of implementing certification examinations
- recommendations on complete curricula toward an interpreter/translator degree
- certification program for translation of documentary evidence

Recommendations that may lead to implementation of these projects will improve both the quality and the amount of court time spent on interpreting services.

The issues which the Task Force will address have been discussed and dealt with by professional interpreters for years. Organizations such as CITA and TAALS stand ready to assist in contributing data concerning court interpreting issues. There is no reason to conclude that a highly competent and experienced group of professionals, working with a Federal Judge, cannot make effective recommendations within a 9-month period. It should be borne in mind that the Task Force is not charged with implementing programs, but with suggesting possible programs.

What Your Honor refers to under "Training" may have arisen from a mistaken impression because the only mention of training in this bill is found in the section on the Task Force, which provides for recommendations on proper training or education programs. Therefore, no expenses will necessarily be incurred by the AO for training.

With respect to the estimated cost of the Task Force, we have been informed that the head of the Task Force, on temporary assignment within the Federal system, would be paid the same salary received in her present position as Supervisor of Interpreters. Additionally, we cite the Act itself, which states that all other members of the Task Force shall work part-time. Thus, the GS-18 figure refers exclusively to a figure from which a daily pro-rated fee could be established for the part-time members.

The Court Interpreters and Translators Association is certain that the Task Force will indeed make valuable recommendations within 9 months, and that its work will cost a minimal amount, while being of significant benefit.

## CONCLUSION

In conclusion, CITA renews its carefully considered support of all amendments embodied in S. 1853. We are in a privileged position to assert that qualified simultaneous interpreters are available and eager to be certified, and that it is in the interest of the American public as well as the U. S. court system to proceed with the proposed legislation in S. 1853.

Sincerely,

Nancy Festinger

Nancy Festinger
President, CITA

THE AMERICAN ASSOCIATION OF LANGUAGE SPECIALISTS
(TAALS)

1000 CONNECTICUT AVE., N.W.
SUITE 9
WASHINGTON, D. C. 20036
U.S.A.

February 19th, 1986

Senator Orrin G. Hatch
Subcommittee on the Constitution
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch,

As President of TAALS (The American Association of Language Specialists) and a free-lance conference interpreter and translator with more than 25 years of experience in Europe and in the Americas, I would like to commend you for the initiative to amend the Court Interpreters Act of 1978.

Since its establishment in 1957, TAALS has striven to establish and maintain the highest standards for our profession; therefore we strongly favor your efforts to improve the quality of Court interpreters. More specifically, we consider it imperative to establish certification procedures for Court interpreters in all the languages frequently used in judicial proceedings. This would allow only qualified interpreters to work in the Federal Courts and would help to avoid the mistakes that all too often deprive non-English speaking defendants of due process of law and, given the high visibility of Court interpreters, tarnish the reputation of our entire profession.

To that end, we emphatically recommend the establishment of specific training courses in all aspects of Court interpretation, with particular stress on legal terminology, and the development of written and oral tests, to be administered by a panel that should include experienced conference interpreters, qualified in the same language as the candidate. On this subject, I should like to mention that many members of TAALS have been instrumental in drafting the original certification test for Spanish and in administering the test all over the United States.

It should also be remembered that even the best qualified interpreters, in order to do their job, need adequate electronic equipment for simultaneous interpretation, must be able to hear and see the participants at all times and should be supplied in advance with all available documents in order to familiarize themselves with the terminology of the proceedings and the details of the case (see enclosed ISO standards for mobile simultaneous equipment.)

We further applaud the proposal to align the fees for Court interpretation with those paid by the US Department of State to conference interpreters (which are negotiated every year by the Department of State with TAALS for the whole profession), and with the prevailing market rates. This would attract greater numbers of qualified interpreters to the Courts.

I am taking the liberty of sending you a copy of our Yearbook, which contains our professional code and other relevant information. Together with my colleagues at TAALS, I am at your disposal for whatever assistance we might be able to give and would be more than happy to help in any way possible toward a successful outcome of your efforts.

Sincerely yours,

Anna Saxon-Forti

Anna Saxon-Forti

President

Copy: Mrs. Dena Kohn
Supervisor of interpreters
U.S. District Court
Southern District of New York

# International Standard ISO 4043

INTERNATIONAL ORGANIZATION FOR STANDARDIZATION•МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ПО СТАНДАРТИЗАЦИИ•ORGANISATION INTERNATIONALE DE NORMALISATION

## Booths for simultaneous interpretation — Mobile booths — General characteristics and equipment

*Cabines d'interprétation simultanée — Cabines transportables — Caractéristiques générales et équipement*

**First edition — 1981-02-01**

**UDC 06.053.56 : 534.842**

**Ref. No. ISO 4043-1981 (E)**

**Descriptors** : interpreter's booths, mobile equipment, specifications, dimensions, acoustic insulation, ventilation, illuminating, work place layout, accessories.

Price based on 4 pages

## Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards institutes (ISO member bodies). The work of developing International Standards is carried out through ISO technical committees. Every member body interested in a subject for which a technical committee has been set up has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work.

Draft International Standards adopted by the technical committees are circulated to the member bodies for approval before their acceptance as International Standards by the ISO Council.

International Standard ISO 4043 was drawn up by the ISO Central Secretariat in collaboration with the International Association of Conference Interpreters (AIIC), and circulated to the member bodies in February 1980.

It has been approved by the member bodies of the following countries :

Australia
Austria
Belgium
Canada
Czechoslovakia
Denmark
Egypt, Arab Rep. of
Germany, F. R.
India
Israel
Italy
Netherlands
New Zealand
Norway
South Africa, Rep. of
Spain
Switzerland
United Kingdom
USA

No member body expressed disapproval of the document.

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**INTERNATIONAL STANDARD** **ISO 4043-1981 (E)**

# Booths for simultaneous interpretation — Mobile booths — General characteristics and equipment

## 0 Introduction

The aim of this International Standard, prepared at the request of the International Association of Conference Interpreters (AIIC), is to provide optimal conditions for simultaneous interpretation using mobile booths.

The design of the booths is governed by three requirements :

a) acoustically separating different languages spoken simultaneously;

b) providing good two-way communication between the booths and the conference hall;

c) placing the interpreters, whose booths are their workplace, in conditions of comfort that will enable them to continue to exert the intense effort of concentration required.

## 1 Scope and field of application

This International Standard lays down the basic requirements for mobile booths for simultaneous interpretation which are used ad hoc in halls not equipped with permanent facilities.

The main features of mobile booths, distinguishing them from permanent facilities, are that they can be disassembled, moved and be set up inside the conference room.

Booths that can be moved but are used on the premises and stored near conference rooms are not covered by this International Standard. They should be designed to conform as closely as possible to permanent booths as specified in ISO 2603.

An annex concerning public address and simultaneous interpretation systems is given for information only.

## 2 References

ISO 140/IV, *Acoustics — Measurement of sound insulation in buildings and of building elements — Part IV : Field measurements of airborne sound insulation between rooms.*

ISO 717/1, *Acoustics — Rating of sound insulation in buildings and of building elements — Part 1 : Airborne sound insulation in buildings and of interior building elements.* [1]

ISO 2603, *Booths for simultaneous interpretation — General characteristics and equipment.*

## 3 General requirements

### 3.1 General

Designed for temporary service in a variety of locations, mobile booths shall be flexible in use and of rugged construction. They should provide optimum sound-insulation properties and be of lightweight construction.

Table-mounted hoods are not acceptable as a working environment.

In selecting a hall in which to set up mobile booths and equipment, the user should seek advice from suppliers of such equipment, a conference technician and a consultant interpreter.

### 3.2 Suitability of conference halls

Halls should be of adequate size to house participants, booths and equipment (see 3.3) and be located away from all noise sources (for example outside traffic, noisy passages inside buildings, lifts and kitchens).

Satisfactory hall acoustics should be ensured.

Halls should be fitted with suitable heating and ventilation (air-conditioning), with a carbon dioxide level not exceeding 0,1 %.

### 3.3 Siting in relation to the conference hall

A sufficiently large area should be allowed to place the booths together in a position from which the rostrum, participants, blackboard and projection screen can be fully seen. The use of a platform for the booths should be considered to improve visibility.

Obstruction of view, such as pillars, beams, etc., should be avoided.

A free space (minimum : 2 m) should be provided between conference table, delegates' chairs and booths to avoid participants being disturbed by voices from the booths.

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[1] At present at the stage of draft. (Revision of ISO/R 717-1968.)

A passage behind the booths at least 1,50 m wide should be provided.

Access to the hall past the booths shall be avoided. Separate access to the booths should be provided where possible.

### 3.4 Size of booths

Each booth shall accommodate the required number of interpreters seated in comfort side by side (to cater for large teams with numerous language combinations requiring more than one outgoing language).

Each booth shall be sufficiently wide to allow occupants to enter and leave without disturbing one another, and high enough to provide adequate volume.

Internal dimensions for a standard mobile booth shall be not less than :

| | Recommended | Minimum |
|---|---|---|
| – width : For up to two interpreters | 1,60 m | 1,50 m |
| otherwise : | 2,40 m | 2,25 m |
| – height : | 2,00 m | 1,90 m |
| – depth : | 1,60 m | 1,50 m |

It is understood that, for practical reasons, suppliers may not be able to implement the recommended dimensions. It is expected, however, that booths conforming approximately to these dimensions will be supplied where possible. The question of dimensional requirements will be reviewed at the next revision of this International Standard.

### 3.5 Doors

If booths are fitted with doors, these shall not open inwards and shall not be lockable from the outside.

Low-noise door fittings shall be used.

### 3.6 Cable passages

Where cable passages are necessary in the side or front panels of the booths, they should be of the smallest possible dimensions compatible with the equipment used and be closed with suitable sound-proofing materials after inserting the cables. In all cases, the opening shall be minimum 40 mm × 80 mm.

## 4 Windows

### 4.1 General

Each booth shall have front and side windows.

Any mullion posts that may be necessary shall be as narrow as possible and shall not be in the central field of view of any working positions.

Window panes shall be clean and free from scratches which may impair visibility.

### 4.2 Dimensions

Front and side windows shall have a height of 0,7 m. Side windows should extend from the front window over a minimum of 0,6 m along the side wall and over 0,1 m from the free edge of the working surface.

## 5 Acoustics

### 5.1 Sound insulation

Mobile booths shall be so designed as to provide reasonable sound insulation against speech transmitted from one booth to the adjacent booth(s) or the hall and against spurious noise from the hall.

The sound insulation shall be checked according to ISO 140/IV as a measure of the difference in sound pressure levels, *D*, using one of the booths as receiving room while the sound source fed with white or pink noise excites the source room, being the hall or the immediately adjacent booth.[1]

The sound pressure levels shall be measured in octave bands in the source and receiving room, and the difference between the two sets of sound pressure levels should at least equal :

| frequency | 250 | 500 | 1 000 | 2 000 | 4 000 Hz |
|---|---|---|---|---|---|
| *D* | 12 | 15 | 18 | 20 | 20 dB |

for the noise transmitted from the hall to a booth.

For the noise transmitted from booth to booth the differences between the two sets of sound pressure levels should at least equal :

| frequency | 250 | 500 | 1 000 | 2 000 | 4 000 Hz |
|---|---|---|---|---|---|
| *D* | 18 | 21 | 24 | 28 | 28 dB |

The measurement of *D* between booths and from outside into a booth shall be made with booths installed in a suitable hall, thus resembling practical conditions.

### 5.2 Sound absorption

Reverberation and sound reflection shall be reduced by using suitable anti-static sound-absorbing materials on inside surfaces.

A screen of absorbent material behind the booths may be used to attenuate the reflection of sound by the wall behind the booths.

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[1] For the measurement of booth sound insulation, reference may also be made to the method specified in ISO 717/1.

## 6 Ventilation

Booths shall be fitted with an effective ventilation system, ensuring complete renewal of the air at least seven times per hour.

The equivalent A-weighted sound pressure level inside the booth due to the ventilating system shall not exceed 40 dB. The ventilation system shall be such that mechanical vibration is reduced to a minimum.

## 7 Working surface

The working surface shall extend across the full width of the booth. Its height should be between 0,72 and 0,76 m from the floor. Its strength shall be sufficient to take the weight of control panels, documents and interpreters leaning on its surface. The useful depth, excluding any equipment, shall be 0,30 m and the total depth shall be not less than 0,45 m.

## 8 Lighting

In each booth at least two compact light sources shall be provided, preferably mounted on adjustable fittings. They shall provide a lighting intensity of between 300 and 600 lx over 0,2 m$^2$ of the working surface. It is, however, desirable that the light should be regulated in two steps, the lower range from 100 to 200 lx, the higher better than 300 lx.

## 9 Seating

Each interpreter requires a comfortable chair, adjustable as to height and capable of being easily and silently moved about. The surface material of the seat should preferably be permeable.

Mobile booths are delivered by the booth supplier without chairs.

The supply of chairs shall be the responsibility of the hall operator or the client.

## 10 Materials

All materials employed should be easy to maintain, odourless, anti-static, fire retardant and not cause irritation to eyes, skin, or respiratory tract.

## 11 Booth audio equipment[1]

### 11.1 Controls and headphones

One set of controls and headphones, as defined in sub-clause 3.3 of ISO 2603, shall be provided for each interpreter. If the booth is occupied by two interpreters, the use of one dual-control panel is permissible.

As interpreters have individual preferences, it is desirable for the control panel to allow alternative connection of base-mounted microphones or headset combinations.

### 11.2 Microphones

Interpreters' microphones may be mounted on a movable base or combined with headsets. It is recommended to provide one microphone per interpreter for up to two interpreters and a minimum of two microphones for three interpreters.

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[1] Booth audio equipment will be covered in future IEC documents.

# Annex

## Public address and simultaneous interpretation systems

(for information only)

Acoustic feedback and echoes in the hall may impair simultaneous interpretation and, in extreme cases, block the memory processes of the interpreter.

Moreover, some of the audience depend on headset reception which may be rendered inaudible by loudspeakers when operated at their normal level. Therefore, public address systems should not be operated in combination with simultaneous interpretation.

When speech reinforcement cannot be dispensed with (for example majority of participants listening to conference proceedings in one language) public address systems should be operated at their lowest level and every endeavour should be made to eliminate loudspeaker feedback into microphones placed in the hall.

In order to provide for effective control in such situations, multichannel (simultaneous) systems and public address (single-channel) systems shall have separate volume controls allowing individual level adjustment, independent of each other, whereby lowering the public address level will not reduce the signal strength available to interpreters; they shall also be fed from a single microphone installation.

Level controls of the two systems shall be located close to each other to enable both levels to be monitored in the same room, preferably by the same operator.

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT DEPARTMENT
CAMBRIDGE 02141

CHAMBERS OF THE
PRESIDING JUSTICE

February 21, 1986

Senator Orrin G. Hatch
Chairman
Subcommittee on the Constitution
United States Senate Committee on the Judiciary
135 Russell Senate Office Building
Washington, D.C. 20510

Re: Senate Bill 1853
Court Interpreters Improvement Act of 1985

Dear Mr. Chairman:

I recently obtained a copy of Senate Bill 1853 which was submited to the U.S. Senate to improve and expand interpreter services in the United States District Courts. As a past chairman of the Committee on Court Interpreters for the Trial Court of the Commonwealth of Massachusetts I am familiar with the many problems and issues experienced by state judicial systems that do not have a system for testing, and certifying court interpreters.

Senate Bill 1853 is very timely and necessary to assure equal access for non-English speaking persons and the hearing impaired to our judicial court system. The creation of the National Court Interpreters Special Task Force as provided for in section 1829 is probably the most important feature in the proposed legislation since it provides the experts and professionals in this area an opportunity to promulgate regulations and standards for the education, training and required performance of court interpreters.

The proposed amendment also addresses a serious deficiency in the existing law. Senate Bill 1853 provides criteria for the appointment of "otherwise competent interpreters".

While I applaud your continued efforts to improve court interpreter services in federal courts, I feel it is unfortunate that your committee cannot address the problems encountered by non-English speaking persons and the hearing impaired on the state level. It is my firm belief that great miscarriages of justice occur with much greater frequency in the state courts then in the federal district courts. Although, the Court Interpreters Act of 1978 has served at a standard by which to evaluate court interpreter programs on the state level, little progress has been made to date.

I sincerely hope that your Committee is successful in gaining passage of Senate Bill 1853. Every individual in our Country is entitled to equal access to our courts. The promulgation of the "Court Interpreters Inmprovement Act of 1985" would remedy many injustices that continue to occur in our federal judicial system.

Very truly yours,

Charles M. Grabau
Justice of the Superior Court

CMG:lah

RAYMOND F. BURGHARDT
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

March 18, 1986

Honorable Senator Orrin G. Hatch
United States Senate
Subcommittee on the Constitution
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch,

I wish to express my support for the bill S 1853, "Court Interpreters Improvement Act of 1985" which you have introduced before the Senate Subcommittee on the Constitution.

I am presently a staff interpreter of the United States District Court for the Southern District of New York, but before accepting this position in the summer of 1983 I had been actively working as a free-lance interpreter in international conferences, administrative proceedings, and for private law firms. I worked in municipal and state courts, and at the federal level mainly in the District of New Jersey, where I reside, and also in New York and South Carolina after I was certified by the Administrative Office of the United States Courts in 1980. I was hired by the New Jersey Task Force on Court Interpreting, and after my services as consultant were completed, I was invited by Judge Alterman to become an ad-hoc member of the Supreme Court Task Force on Interpreter and Translation Services.

I am therefore very familiar with many of the problems plaguing court interpreting which compromise the interests of due process and the rights of defendants to a fair trial. If I can be of service in helping to bring the bill to its enactment or in the implementation of its provisions, please contact me and I will be very happy to give my contribution.

As a member in good standing of the Court Interpreters and Translators Association, I subscribe to the well-studied position that our national association has adopted in support of this bill. Since they represent interpreters of many languages who have provided innumerable hours of interpretation in court proceedings all over the country, they have expressed their opinion with knowledge and authority, and I am confident that it will receive the consideration it deserves.

Thank you very much for your dedicated efforts in guaranteeing the rights that our constitution provides to individuals, whether foreigners or American-borns, so that we all can come as equals to the bar of justice.

Sincerely yours,

Sara M Garcia-Rangel
Sara García-Rangel

Staff Interpreter

Mirta Vidal
235 West 22 Street
New York, N.Y. 10011

February 24, 1986

Subcommitte on the Constitution
135 Russell Senate Office Building
Washington, D.C. 20510

Att: Dee Benson, Esq.

Dear Mr. Benson:

I am writing to express my support for the Court Interpreters Improvement Act of 1985. As former Supervisor of Interpreters and Chief Interpreter of the U.S. District Court for the Eastern District of New York, a position that I hel from 1981 to 1984, I am thoroughly familiarized with the deficiencies in the interpretation services currently being provided to non-English speaking defendants in the Federal Courts. I feel strongly that a number of measures are needed to upgrade these services and I believe the Court Interpreters Improvement Act addresses many of these issues.

I wholeheartedly support efforts to implement the provision of the Court Interpreters Act of 1978, 28 U.S.C., Section 1827, concerning the certification of interpreters of languages other than Spanish. In my experience, the quality of intepretation currently provided in this category is considerably inferior to that offered by certified Spanish/English interpreters, unwittingly resulting in an unfair and unbalanced administration of justice. Not having formal testing proceedures enables almost anyone claiming knowledge of a foreign language and experience in the field to interpret complex proceedings for which the person is often not sufficiently qualified, since the people in charge of contracting per diem interpeters in the Courts are not really in a position to determine the quality of that person's interpretation. I am certain that screening foreign language intepreters in the categories mentioned in the proposed bill --which are, in fact, the most frequently called for -- through certification exams, will go a long way towards correcting this situation and helping the Courts select the best qualified and most capable interpreters.

Certification, however, is only the first step in the process of training and developing the skills required in this highly specialized and demanding branch of the interpreting profession. Since the original Interpeter's Act was put into law, limited progress has been made in providing interpreter's offices in the Federal Courts the wherewithal to constantly upgrade the quality of servises they provide, such as glossaries, dictionaries and other reference materials, as well as other training tools and equipment. In my opinion, for instance, interpreters working on trials or lengthy hearings should have dictionaries at their disposal in the courtrooms at all times since, just as lawyers and judges must constantly refer to legal sources in the course of performing their duties, so must interpreters constantly refer to language-related sources. I believe adoption of the proposed bill would enable the Administrative Office of the U.S. Courts to allocate the funds and resources needed to make these improvements.

Finally, I would like to endorse the proposed bill's call for an increase of fees paid to per diem intepreters to be on a par with that paid to State Department interpreters. The Federal Courts in areas with large non-English-speaking communities depend on a pool of qualified interpretes who are available on a regular basis to cover proceedings that cannot be handled by staff personnel alone. This will always be so because of the srtucture and nature of court calendars and proceedings. Because no single interpreter is called upon to work every single day of the year, the net income of interpeters working regularly in the courts system is considerably lower than that of interpreters in other fields within the profession. Relatively few, in fact, are available to work exclusively in the courts because of financial needs. This results in a chaotic situation for the staff personnel responsible for providing adequate interpretation to the various courtrooms each day, since not enough qualified interpeters are available. If a more efficient system is to be developed to make use of per diem interpreters, a fee increase that reflects the actual rates paid for these services, both in private industry and in other branches of government, is essential. This is all the more truein view of the fact that the current fee of $175 per day has not been increased for the past several years, while the cost of living has risen sharply during that same period of time.

I thank you for your consideration of this matter.

Yours very truly,

Mirta Vidal
Certified Court Interpreter

February 25, 1986.

Janis Palma, U.S.C.C.I.
815 East 14th Street, Apt. 6B
Brooklyn, New York 11230

Dee Benson, Esq.
Sub-Committee on the Constitution
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Benson:

I hope this letter arrives in time for all the Honorable Members of the Sub-Committee on the Constitution to read and receive as testimony in favor of S.1853, "A Bill to Amend the Court Interpreters Act of 1978."

I have been an interpreter of English and Spanish since 1980, certified by the Administrative Office of the United States Courts in 1981. I have worked in the United States District Courts for the Southern Districts of Texas and Florida, Northern Districts of Texas and Florida, Alabama, and now in the Eastern District of New York. I have had a unique opportunity to observe how the Court Interpreters Act has been implemented or ignored in these various parts of the country. I would like to share with you these observations in the hopes that you will find them useful in making your determination concerning S.1853.

The Bill states, beginning on line 5: "SEC.2.(a) The Congress hereby finds that --

> (1) qualified interpreters are sometimes not provided to non-English speaking persons..."

During 1985 and portions of 1984, while the State of Texas had about 24 Spanish language certified court interpreters, 6 of them within the jurisdiction of the Southern District Brownsville Division, the Clerk Office there made it a practice to call upon an interpreter who was not certified and in fact had little experience and qualifications, knowing full well that certified interpreters were available. The reason for this was strictly financial: in order to "save" money, this interpreter -- a 17-year old, whose father happens to be a certified court interpreter on staff and wanted to encourage his son to follow in his footsteps -- was regularly called in to interpret for non-English speaking defendants appearing before the United States Magistrates. No attempt was made by the Clerk's Office on those ocassions to call at least one of the 3 available free-lance certified interpreters, one certified interpreter working in the Cameron County Courthouse, or to re-schedule the workload of the two staff certified interpreters in the Brownsville Division so these defendants could be afforded competent interpreter services. The premise still seems to be that proceedings before a Magistrate are not "as important" as those before a District Judge, therefore some rights can be abridged.

While some Courts demonstrate full familiarity with the provisions of the Court Interpreters Act of 1978, and will make every reasonable effort to secure the services of a certified court interpreter -- as is the case in Dallas (Northern District of Texas), Alabama, Pensacola (Northern District of Florida), for example, others seem to have never heard of this law and have never sought a certified interpreter for their courts (such as the Corpus Christi Division of the Southern District of Texas). In Pensacola I discovered that the Clerk's Office had not updated their schedule of fees since the first schedule was issued in 1979. In Brownsville the Clerk's Office did not even know such a schedule existed.

During 1982 the Magistrate sitting in McAllen, Texas used her secretary to interpret at all the proceedings because no one knew, or informed her, that certified interpreters were available and that she could contract them. After I mentioned to her secretary that there was a law that passed in 1978 and provided funds for these services, the Magistrate began to use the services of a certified interpreter.

During 1983, in a criminal case with eleven defendants who needed Spanish interpreters throughout the duration of a lengthy and complicated trial, the defense attorneys filed motions before the District Judge requesting the assistance of court-appointed interpreters (all lawyers were court-appointed) to allow defendants and defense counsel to review evidence against them. These motions were denied, as if the Court Interpreters Act of 1978 did not provide for these services. This case was in Brownsville. I was one of the Official Court Interpreters in that Division at that time. After I resigned my position there to become a free-lancer I interpreted for a telephone interview between a witness from Honduras, the United States Attorney and one of the defense lawyers in that case. To this date I have not been paid for those services (although the matter of payment for interpreters' services is another matter).

I can tell you about these instances of which I have personal knowledge, but there are many more which I hear from colleagues from all over the country. The most common occurence seems to be that the clerks in charge of calling in free-lance interpreters bypass those on the list of certified interpreters and call others whom they know are not certified. One must wonder if this is the result of lack of information -- have they not heard about the Court Interpreters Act? -- or just blatant disrespect for the law. I must also mention here, since I spoke about the list of certified court interpreters, that I have knowledge of more than three District Clerk Offices where this list has never been seen, or if they have ever seen it they never took a second look because they claim no knowledge of such list. This I have found to prevail among District Courts in the Southwest.

On page 4 of the Bill, line 20, the Section pertaining to the competency of "otherwise qualified" interpreters reads:

> "(2) The Director, after consultation with the National Court Interpreters Special Task Force and within one year after the date of enactment of this section, shall issue regulations establishing criteria based on interpreter education, training, required performance, and experience, for the selection of otherwise qualified interpreters of languages for which no interpreters have been certified by the Director, and in the selection of otherwise qualified interpreters where no certified interpreter is reasonably available..."

Without such criteria the Court Interpreters Act may defeat its own purpose, providing an exceedingly wide margin of variances where the incompetent may fall in together with the competent non-certified. In fact, there are many interpreters who are not certified -- be that because no certification is available in their language combination, or because they have yet to take the certification exam, or any other reason -- but are competent and well qualified. However, only one with equal or greater competency may determine that fact. Without clear guidelines, judges who are not proficient in another language presently have no way of making an intelligent and informed determination as to the qualifications and competence of a non-certified interpreter. Non-English speaking defendants are held hostages of any one who decides on a whim that he/she is an interpreter and is called to assist the Courts in a criminal proceeding (or a government civil action), when no certified interpreter is available.

Again, only those with the languages and interpreting background to render them true experts in the field can be considered qualified to make a determination as to the criteria that should be followed in order to assess another interpreter's competency. The designation of a National Court Interpreters Special Task Force is a concept that should have been implemented as soon as the Court Interpreters Act was, in 1979. Not only will this Task Force contribute to improved language services in the Courts, but it will also leave a permanent legacy for future improvements in the administration of justice for non-speaking residents of this country. My experience these last five years has brought to light ample evidence that the work this Task Force will be performing, as proposed under the Bill's Section 1829, National Court Interpreters Special Task Force, is urgently needed and overdue.

My last comment on this bill concerns the matter addressed on page 5, starting on line 14:

> "The Director shall prescribe, subject to periodic revision, a schedule of fees for services rendered by interpreters. Such fees shall be reasonable and consistent with prevailing compensation rates for professional simultaneous and consecutive court interpreters in the judicial district where such interpretation services are rendered, or the judicial district from which a certified or otherwise qualified interpreter is obtained, whichever is greater. In no event shall fees for interpreters be set at a rate less than those currently paid by the United States Department of State to conference level interpreters for the same language."

As you are well aware, court interpreters are the only interpreters, among all the different specializations in this field, who are sworn to interpret truthfully and accurately. This is done because such is the court interpreter's lawful responsibility. Such sworn duty is not to be taken lightly. The degree of skills required to perform in a court of law, interpreting every word said, exactly as said, preserving original intent, tone, language level, semantic fields and grammar, is a highly demanding task that should be compensated accordingly. While court interpreting may at times be more demanding than conference interpreting, I believe that being paid at least as much as a conferce interpreter is paid is only fair and reasonable.

Overall, this Bill is an excellent and timely measure, to benefit everyone it affects: interpreters and defendants, lawyers and judges, and the overall judicial system that depends on good interpreters for the effective and efficient administration of justice. A justice that we are all entitled to, whether or not we speak English.

Non-English speakers' rights cannot be protected if the language vehicle is incapable of performing so that they understand what they are being accused of, be present at and understand every stage of a proceedings against them, assist legal counsel in their own defense, or confront and cross-examine witnesses against them. This vehicle is the court interpreter. I trust you will see the benefits this Bill, S.1853, offers to everyone involved, and in your foresight and wisdom will give it your full approval.

Thank you.

Sincerely,

Janis Palma
United States Courts-Certified Interpreter
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March 13, 1986

The Honorable Orrin G. Hatch
United States Senate

Dear Senator Hatch:

Since you are a member of the Senate committee presently considering the proposed bill to amend the Court Interpreters Act of 1978, I feel compelled to write you this letter. I am a federally certified Court Interpreter. For fifteen years I worked as a staff interpreter in the United States District Court for the District of Puerto Rico, and in 1985 I participated as a rater in the administration of the oral portion of the Federal Court Interpreter Certification Examination. For the past month and a half I have worked as a freelance interpreter on the much celebrated "Sanctuary Trial". I am concerned about some of the bill's propositions.

Even though at this time I am a freelance interpreter who stands to gain if the proposed amendment becomes legislation, I am against increasing by 50% the per diem paid to federally certified court interpreters who work on a freelance basis. The main reason for my opposition is that I am concerned about the negative effects it would have on the ability of state courts to retain federally certified court interpreters who freelance in those courts. This inability would endanger the due process rights of non-English-speaking parties involved in actions in those courts.

Having been a member of one of the task forces that the Administrative Office of the U. S. Courts assembled to carry out the certification of court interpreters, I am convinced of the importance of having experts in the fields of linguistics, education, and conference interpretation, as well as court interpretation, participate in the construction and administration of the certification examination. During the oral rating tour in which I participated, the value of the perspectives and experience of these other professionals proved itself. The task force as proposed by the bill would eliminate this valuable input, thus lowering the standards of the test and ultimately of the profession.

I do not believe that it is necessary that a Special Task Force be created by law when the Administrative Office has been creating effective task forces for the past eight years.

Regarding the need for certification of interpreters in languages other than Spanish, I am not aware of any study that distinguishes the importance of having interpreters certified in one language rather than another. In fact, I wish you would answer two questions that have been on my mind ever since I read the proposed bill: Why were those languages chosen? Who chose them?

There is one feature of this bill which I do applaud: the proposed amendment to Section 1827(j), which would expand the definition of the term "judicial proceeding" to include pretrial and grand jury proceedings.

Finally, instead of rushing to spend extremely large amounts of money on the proposed task force and on certifying a few interpreters of different languages, I suggest that a feasibility study be conducted to determine if that money would not be better used supplying certified Spanish interpreters to federal government agencies. Federal agencies, such as the INS, the Social Security Administration, and the NLRB, who use Spanish interpreters on a daily basis, should be required to utilize certified interpreters and should be appropriated the necessary funds.

Thank you for considering my thoughts on this matter of great importance. Please contact me if you have any questions about my comments.

Sincerely yours,
Lauren M. Garcia
Lauren M. Garcia

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